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SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1908.

No. 1, Original.

THE STATE OF MARYLAND, COMPLAINANT,

vs.

THE STATE OF WEST VIRGINIA.

IN EQUITY.

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(Endorsed on cover:) Supreme Court U. S. No. 1, Original, Oct. Term, 1907. Maryland *v.* West Virginia. Filed Oct. 15, 1907. Office Supreme Court U. S. Filed Oct. 14, 1907. James H. McKenney, Clerk.

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vs.
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1646 In the Supreme Court of the United States. In Equity.

STATE OF MARYLAND
vs.
STATE OF WEST VIRGINIA.

It is agreed that the depositions taken on behalf of the State of Maryland in the above entitled cause between the 16th day of July, 1902, and the 22nd day of July 1902 before C. A. Fraley a Notary Public, which depositions are hereto attached, may be read as evidence on behalf of the said State of Maryland in said cause, so far

as competent; the attorney of the State of West Virginia having waived the service of notice for the taking of said depositions, as provided in the stipulation between counsel heretofore entered into and filed in this cause.

WILLIAM S. BRYAN, JR.,
Attorney General of Maryland,
By EDWARD W. SINCELL,
Assistant Counsel.
GEORGE E. PRICE,
Of Counsel for West Virginia.

1647 In the Supreme Court of the United States.

No. —. Equity.

STATE OF MARYLAND
vs.
STATE OF WEST VIRGINIA.

Depositions of witnesses taken in Garrett County, Maryland, before George A. Fraley, a Notary Public of the State of Maryland, in and for said County, at the several times and places hereinafter set forth, pursuant to the stipulations of Counsel hereto attached, to be read as evidence on behalf of the plaintiff in a Chancery Suit now pending in the Supreme Court of the United States, wherein the State of Maryland is plaintiff and the State of West Virginia is defendant.

Testimony Taken on Behalf of the State of Maryland.

Counsel for State of Maryland, Edward H. Sincell, Frederick C. Cook.
Counsel for West Virginia, George E. Price.

OAKLAND, GARRETT COUNTY, MD., *July* 16, 1902.—9:30 a. m.

JACOB P. GAUER, called on the part of the State of Maryland, being first duly sworn, deposes and says:

Q. State your age, residence and occupation?
A. Jacob P. Gauer, I am 63 the 19th of August next; born in 1839. Occupation farmer.
Q. Where do you reside?
A. Near Sunnyside, Garrett County, Maryland.
Q. Were you present upon the survey in this case as a witness on behalf of the State of Maryland, made in the year 1897, were you present?
1648 A. Yes sir.
Q. Did you point out any objects upon the ground to Mr. Brown, the surveyor on behalf of the State of Maryland, at that time?

A. I pointed out a tree, the beginning of a tract of land called "The Royal Charlotte."

Q. Please look at the copy of the plat now shown you, to be hereafter filed in this case with Surveyor Brown's return, and state where said tree is and how the location of the same is designated upon said plat?

A. You want to know where the tree is? It is here (indicating).

Q. How is it designated on the plat?

A. The tree is designated on the plat at black A at the corner of the Royal Charlotte.

Q. Please stat- how you know said tree to be the beginning of said tract of land?

A. Well, I have heard—I seen the surveyor begin there; it has always been considered that; older persons claim that as the beginning of Royal Charlotte, that is all. I have held the line to there and own the land adjoining the Royal Charlotte. I own part of the Royal Charlotte, I own the beginning.

Q. The beginning of The Royal Charlotte is one of your points?

A. That is one of my points; I do not own it now.

Counsel for State of West Virginia objects to the foregoing answer as incompetent.

Q. What surveyors have you known to begin at this tree?

Objected to by Counsel for State of W. Va.

A. Michler, when he was running the lines out and run out the lines to the Ward place. He began there to get the distance to the line.

1649 Q. Did you ever know any other surveyors to begin there?

A. Well, when they run out the Royal Charlotte they began there.

Q. I say did you ever know any other surveyors to begin there?

A. No, I did not, but that is one of the points.

Q. How long have you known this tree at the beginning of the Royal Charlotte?

A. Why, it has been pointed out to me as the beginning of the Royal Charlotte since I was a little boy.

Objected to by Counsel for State of W. Va.

I was raised right close there.

Q. Did any one who is now dead ever point it out to you as the beginning of The Royal Charlotte, if so, please give their names?

A. Adam Gauer, old Jonny Gauer, my father Jacob Gauer, Mr. Ward, George Ward's father, Willia, William Ward, I guess that is the name, yes, William Ward.

Q. Are those parties whom you have last mentioned all dead now?

A. Yes sir. Old William Ward told me positively that was the beginning, that I should not forget that was the beginning of the Royal Charlotte.

Q. Who said that?

A. Old William Ward; he said that was the beginning of Royal Charlotte, I should remember that.

That is all.

Mr. PRICE—Cross-examination:

Q. How do you know this point A on the map which you have indicated represents the same place that you showed to Mr. Brown as the corner tree?

1650 A. Well, sir, from the location of those lines here, I can see the distance out here, it runs just like I am living, on the Royal Charlotte, out here somewhere, now Sunnyside, comes in here somewhere as the line, near there, up here. I do not know whether it is or not, though; maybe it is further out that way.

Q. All you know, Mr. Gauer, is that you showed to Mr. Brown a tree as the corner tree?

A. Yes sir.

Q. You did not make this map.

A. Oh, no; I did not have anything to do with that.

Q. You do not know whether the *a* map is correct or not?

A. I suppose it is, it has the appearance of it; it looks to me like the identical thing even from the beginning of it.

That is all.

Further deponent saith not.

Signature waived.

HENRY SISLER, called on the part of the State of Maryland, being first duly sworn, says:

Q. State your age, residence and occupation?

A. I live near Corinth. Is that right? I am a farmer. I am 53 years past.

Q. Were you present on the survey of the lines in the case of the State of Maryland against the State of West Virginia, when Mr. Brown made the locations for the State of Maryland?

A. Yes sir.

Q. Did you point out any objects on the ground to Mr. Brown, the surveyor?

1651 A. Yes sir, I took him to the corner.

Q. Please state what you pointed out to him?

A. Well, we went to the corner where we supposed to be the corner, which was a whiteoak, and torn out by the roots.

Q. What corner is that?

A. Called the Deeken corner. Is that right? Deeken land.

Q. What Deekens tract is that whiteoak a corner of?

A. Of the six thousand acres, supposed to be.

Q. Please look at the plat now shown you and state where on said plat said whiteoak is indicated and shown?

A. Here (indicating).

Q. How is it shown upon said plat, just state how it is shown upon said plat?

A. I do not understand you. Here (indicating whiteoak marked

"End of Deeken's, 222 A.") I join on the same corner. I join at that corner; that is here (indicating).

Q. How long have you known that corner?

A. It has been about 12 years since I have owned the land. I knew it before that.

Q. About how long?

A. Well, it has been about 14 years or 15 years, nearly.

Q. Is that corner generally recognized in that community as the corner of the Deekens six thousand acre survey?

Objected to by Counsel for State of W. Va.

A. Yes sir.

Q. Please state from whom you acquired your information concerning that corner?

1652 A. Well, these men that was running off, De Berry and Elliott, and also Mr. Brown. Mr. Brown also said that was the corner.

Q. Who was Mr. De Berry and Elliott?

A. Mr. Elliott, he is a surveyor, or was a surveyor who surveys once in a while yet. He lives in Terra Alta, and Mr. De Berry is a merchant in Terra Alta, he also used to survey, De Berry did.

That is all.

Mr. PRICE—Cross-examination:

Q. Did you own any part of the six thousand acres of the Dekeens Survey?

A. Well, I suppose that this is a part of it I owned. I got it of M Holes, at least Mr. Holes said so; I think he said all that in there was the six thousand acres.

Q. You do not know that?

A. Not as to the real certainty.

Q. How much land did you own in there?

A. I own 65 acres now.

Q. Have you ever owned any more?

A. No sir, not there.

Q. You have never owned *by* the 65 acres at that point?

A. Yes sir, at that point, yes sir, enclosed in the lines Mr. Brown run, and must be of the six thousand acres.

Q. Do you mean Mr. Brown run around the land you owned?

A. Yes sir.

Q. You bought from whom?

A. From Mr. John Holmes.

Q. John Holmes?

A. Yes sir.

Q. When did you buy?

1653 A. I bought about 12 years ago. It was two years before I went on it, and it has been ten years.

Q. You live in West Virginia?

A. Yes sir.

Q. Pay taxes in West Virginia?

A. Yes sir.

Q. Always have?
A. Yes sir.
Q. And vote in West Virginia?
A. Yes sir. I did live in Maryland awhile.
Q. You live on this 65 acres?
A. Yes sir, the lines run through a part of it.
Q. Where is the line you recognize as the State line there?

Objected to by Counsel for State of W. Va.

A. On the east side of my place.
Q. How far east of your place, or does it run through your place?
A. Right through the place, it goes through one corner like.
Q. Your house is on the West Virginia side?
A. Yes sir.
Q. Were you there when Mr. Monroe run the line?
A. Yes sir—no, I was with Mr. Brown.
Q. Where did he run?
A. He was with Mr. Brown at the time.
Q. That was in 1897?
A. Yes sir.
Q. Were you there when Mr. Monroe ran back in 1894?
A. I was not with him at all.
Q. Do you know where Mr. Monroe's line is through there that he run?

1654 A. No sir.
Q. You do not know?

A. No sir. I do not know where I was; I remember of hearing some of them talking about running the line; I was not with them.

Q. When Mr. Brown ran the line, did he run the line where it has been recognized as the State line, and before that?

Objected to by Counsel for State of Maryland.

A. The last line?
Q. Yes sir?
A. Yes sir.
Q. He did?
A. Yes sir.
Q. And that is the Brown line?
A. Yes sir, that I had reference to.
Q. And that is east of your house?
A. Yes sir, east of my house.

Redirect examination:

Q. Is Mr. Holes, from whom you bought your property, living or dead?
A. He is dead.
Q. Did he ever point out the Whiteoak corner to you?
A. No sir, he never pointed out that corner to me.
Q. Where is your deed recorded, your deed from Holmes?
A. At Kingwood, Preston County, West Virginia.

That is all.
Further deponent saith not.
Signature waived.

1655 W. McCULLOH BROWN, called on the part of the State of Maryland, being first duly sworn, says:

Direct examination:

Q. Please state your age, residence and occupation?

A. My age is 47; I have been surveyor and engineer for a number of years. I reside in No. 8 District, Garrett County, Maryland.

Q. Were you connected in any way with the surveys in the case of the State of Maryland against the State of West Virginia, respecting the western boundary of the State of Maryland?

A. Yes sir, in the summer of 1897 I was substituted and appointed by the Attorney General in the place of John Harned as surveyor on the part of the State of Maryland to run and locate certain lines from the head fountain of the North Branch of the Potomac River to the Mason and Dixon Line.

Q. How long have you been engaged in engineering work?

A. Well, I have been actively engaged since 1890, engaged in railroad work, grading lines, and I have been in the United States Coast Survey, a surveyor in Garrett County, and Grant County, West Virginia. I think I might add in connection with that that while I was in the United States Coast Survey I was in the Magnetic Division of the Coast Geodetic Survey, the object of that being to determine the magnetic meridians and the magnetic elements in different portions of the States of the United States.

Q. While in the employ of the Government in the Coast Survey, where were you stationed in the work, and what work did you do?

A. The headquarters were Washington, D. C., the Coast Survey Office. I did work in Garrett County, Maryland, and in nearly all the counties in *the* eastern Virginia, and in three or four of
1656 the eastern counties of West Virginia, and then I made a complete magnetic survey of the Central and Western portion of the State of Nebraska. That work is all found in the Coast Geodetic Survey Report.

Q. In which Counties of the State of West Virginia were you engaged on this work?

A. In Grant and Hardy, and Pendleton, Penobscot, Webster, Greenbrier, and I think Rockingham County.

Q. Rockingham is in Virginia, just confine it to West Virginia?

A. Randolph County is the County I meant to say. As far west as Webster County, Addison.

Q. Under the instructions from the Attorney General of Maryland what did you first do upon the boundary line?

—. ——.

By Mr. PRICE:

Q. Your employment in the United States Coast Geodetic Survey was after your work on the survey for the State of Maryland against West Virginia.

A. It was in 1900 and 1901.

Direct examination resumed:

Q. Under the instructions from the Attorney General of Maryland, what did you first do upon the boundary line?

A. The party met at Oakland, was formed here, and in company with the attorneys and Mr. Julias Monroe as surveyor representing the State of West Virginia. We went into camp near the head waters of the North Branch of the Potomac.

Q. Better state when that was?

A. That was on the 2nd day of August, 1897.

Q. State generally what you did?

1657 A. Then on August 3rd the party went to the point known as the Fairfax Stone, which was shown to me by William H. Kitzmiller, who is now deceased, as standing directly back or south of where a rough stone had been placed many years ago, marked F. F. X, to designate the beginning of the survey from the point designated as Fairfax Stone, a place that was in the survey, northern neck, northern neck line. The stones which now stand at this point, (or the monument,) are several roughly cut stones, placed one upon another, and were set there by Lieutenant N. Michler.

Mr. PRICE:

Q. Do you know that of your own knowledge?

A. I intended to give the facts as the testimony of William H. Kitzmiller in regard to the position of the stones, that is what I intended. What I want to show is that those stones which now stands there, according to the testimony of Lieutenant Michler——

Mr. PRICE: Objection as to any testimony which witness does not know of his own knowledge.

William H. Kitzmiller told me that the stones which now stand there as Fairfax Stone, the stone was placed there by Lieutenant N. Michler, in 1859. Now, the present stone, designating Fairfax Stone, stands between, or not far from, three small springs.

Direct examination continued:

Q. Did you locate said springs?

A. Yes sir.

Q. By actual survey?

A. By actual survey, and they are south 64 degrees and 59 minutes west 30 feet from one of the springs; north 18 degrees 50 minutes east 34 feet from another spring, and north 46 degrees and 13 minutes east 55 feet from the third spring.

1658 Q. Do we understand you to say that the present stone known as the Fairfax Stone is the distance you have named from the three springs?

A. From the three springs, yes sir.

Q. What is the character of those springs?

A. Well, they are very weak, and on two occasions I have been unable to find any water in any of them, the water being some distance—well, it is northwest of the Fairfax Stone, I have seen them twice, I was there and found them perfectly dry, no water in them

at all. After the discovery, or identification of the Fairfax Stone, we were sometime in cutting out the timber grown up since the survey of Lieutenant Michler in 1859, and in determining the proximate meridian line, which was subsequently corrected, for ascertaining the relation of the Fairfax Stone and its meridian with the Potomac River, the fact being known that a line drawn north, or run north, form the Fairfax Stone, would cross the main River some three quarters of a mile from the Fairfax Stone.

Q. Please state, if you can the exact distance at which a line drawn north from Fairfax Stone crosses the main stream of the North Branch of the Potomac River?

A. It was 4020 feet.

Q. What is the width of the River at that point where it is crossed by this line?

A. What is the width of the River where the Meridian Line crosses? At that point it is thirty feet between the banks, high water mark. I mean the Meridian Line from the Fairfax Stone, after running this proximate Meridian Line. This was done
1659 merely to find the point approximately where the Meridian would cross the River, and then to locate the stream and branches of the River. This did not enter into our final survey. We call the station on the south branch of the Potomac River Station Zero. In our location of the several branches of the River and beginning at that point, we ran——

Mr. PRICE:

A. Just a moment. That station Zero is exactly where?

A. That is on the South Branch of the River where the Michler Meridian—let me correct myself again.

Q. All I want is for you to explain to the Supreme Court where that point is.

A. I want to say the Fairfax instead of the Michler Meridian.

Direct examination continued:

Q. Please state, did you determine the station on the south bank of the North Branch of the Potomac where the Fairfax Meridian crossed the River?

A. They did.

Q. How did you do it?

A. Well, the point is this; we made our trial lines, and I don't want to get that mixed up with the actual lines run. We run our trial lines first and then the River lines from that and then when we came back and ran the Fairfax Meridian we made the necessary corrections which would put our points in the true Meridian. Now, that is what troubles me; if I tell you exactly what we did in sequence, it does not fully correspond with what was the final corrected result.

Q. What we want to know is what you actually did?

A. What we actually did was to run a trial Meridian to the south bank of the Potomac River.

1660 Mr. PRICE:

Q. From the Fairfax Stone?

A. From the Fairfax Stone. Then we ran along the right bank of the River, following the various curves, an angle line, by means of the transit, to a point which we designate on the map as Station 31. That is the forks of the stream. Then we ran from Station 31 still along the right bank—do you want the courses and distances?

A. No, simply refer to them?

A. At the end of 5,975 7/10 feet from Station 31, we located a strong spring at a distance of 15 feet to the left of our line. The total distance from Station 31 was 6,418 8/10 feet to the Fairfax Stone. That is the distance from Station 31 at the forks of the stream to Fairfax Stone. I should there have given the courses we have run from Station Zero, first in a westerly, then southerly and then southeastern course to Fairfax Stone, running around in a curve all the time, being to the west of Fairfax Meridian. From the Fairfax Stone, as I have already stated, we located three springs. These I gave the courses and distances for. I then returned to Station 31 and ran up the right bank, or westernmost side of the northern branch of the Potomac River, and at station designated on the map as No. 75 located the mouth of a stream flowing into the larger one which we were following. Then at Station 81 upon the map, a small stream enters upon the east side. At station 94 I located a strong spring south 45 degrees 38 minutes west 90 feet. Then at the end of 97 feet on the 95th line I located a spring 10 feet to the left, and at the end of 110 feet a spring 15 feet to the left; at Station 97 we located the head spring of the North Branch of the Potomac River, which we found to be 6,477 7/10 feet from Station 31.

1661 Counsel for State of W. Va., objects to witness giving his opinion as to what spring is the head spring of the Potomac River.

Direct examination resumed:

Q. What kind of spring did you find at Station 97 on the plat?

A. A very strong, good, cool spring.

Q. Is it or not the same character of spring that you found near the Fairfax Stone?

A. It is quite different from that near the Fairfax Stone.

Q. In what respect is this spring different from that near the Fairfax Stone?

A. Well, different from the volume of water largely, and it was subsequently determined by its elevation and its nearness to the main watershed of the district. I have not finished as to the testimony of the branches. I returned again to Station 75 on the north form of the Potomac River, and ran up and located a spring at a point designated as Station 81 on the plot.

Mr. PRICE:

Q. What did you say you located at 81?

A. We located a spring ten feet to the right. You see, we give the courses and distances here, and the courses and distances are

all numbered. Now the 81st course is north 46 degrees and four minutes west 56 8/10 feet. Then taking the line I located the head stream which I was running at Station 93. I then returned to Station 81 on the north branch of the Potomac River, and located at the end of 80 feet on the 87th line a spring three feet to the left of my line, and at station 95 on the plot we located the head spring of the stream which I was running. I returned to Station 94 on the plot and ran to Station 96 and from said point I located four springs as follows: The first spring north 81 degrees and seven minutes
1662 west 136 4/10 feet; the second spring north 44 degrees 48 minutes west 98 feet, and the third spring north 32 degrees 52 minutes west 99 feet; the fourth spring north 70 degrees 36 minutes west 181 feet. I thus located all the streams upon the north form of the Potomac River and found that the spring designated upon the plot as Potomac Spring was the—I will change that, let me see just what I want to say. I should have said I ran up the west branch, when we ran to Station 97, the most distant spring from the Station 31, at the forks of the River, we set a stone which we marked "Potomac 1897," and that stone is indicated on the plot by the word- "Potomac Spring." That is what I wanted to get at. We set that stone right at the head of the spring. This spring is in a hollow.

Direct examination continued:

Q. Now, proceed with your testimony, with what you did?

A. I gave, didn't I, the distance of that? I did give the distance of that line, from the survey which I thus made from Station Zero, which is in the Fairfax Meridian 4020 feet north of the Fairfax Stone, I found that the Potomac Spring was 7,220 99/100 feet north of the Fairfax Stone and 5,978 56/100 feet west of the Fairfax Stone, or Fairfax Meridian, they are one and the same thing, and I found no other spring which was so far west. We planted eleven feet due north of the Potomac Spring a large rock, 12 by 12 inches, and 3½ feet long, projecting four inches above the surface of the ground, which is marked in the true Meridian of the Potomac Spring by a copper bolt in the center. From the Potomac Spring we ran north 54 degrees seven minutes west five and three-tenth- feet; north 76 degrees and 21 minutes west 296 feet to the top of Back Bone Mountain; this point being shown on the plot by the word- Back Bone, and continued south 75 degrees 55 minutes west 159
1663 feet; south 86 degrees 21 minutes west 91 feet to a spring forming the head of Lead Mine Run, which is marked upon the plot Lead Mine Run; and then ran down this stream north 54 degrees and 24 minutes west 150 feet.

Q. What is Lead Mine Run?

A. That is one of the courses of Cheat River, flows into Cheat River.

Q. Is it on the east or west side of Back Bone Mountain?

A. Southwest—I mean northwest.

Q. Where are the waters of the Potomac River with reference to the Back Bone Mountain?

A. They are to the southeast, that is, the head waters.

Q. Do any of the head waters of the North Branch of the Potomac River cross the Back Bone Mountain?

A. No, they do not; they are all to the southeast, east and southeast.

Q. What forms, if you know, the water shed of the Potomac River?

A. All the largest sources of the headwaters, and springs are found on the southeast slope of the Back Bone Mountain.

Q. Did you determine the elevation of Fairfax Stone and Potomac Spring?

A. Yes sir, I did.

Q. Please explain how you did it, and what you did in determining said elevations?

A. In order to have the actual elevation above tide, I obtained from Mr. James Calbreath, the engineer of the West Virginia Central and Pittsburg Railway, and from their official maps and papers, the elevation of Fairfax Summit upon the West Virginia Central Railroad, which was given me as 3,066 feet above tide. This point is marked on the bank near the Railroad by a post marked T.
1664 C. L., which is the Tucker County line, the highest point. Assuming this elevation as correct, 3,066 feet, I ran an actual line of levels with an engineer's level, to the Fairfax Stone.

Q. From what point?

A. From this point upon the West Virginia Central Railroad, and found the elevation of the base of the Stone to be 3,162 4/10 feet. The water of the more northerly of the three springs near the Fairfax Stone, which is generally considered as the head of that branch of the run, is the same as the base of the Fairfax Stone, and that is the highest, that is the greatest elevation of either of the springs. Starting again at the Fairfax Stone, continued my line of levels to the spring at the Potomac Stone, the elevation of which spring I found to be 3,287 1/10 feet. The elevation of the stone, which was planted eleven feet north of this spring, is 3,290 4/10 feet.

Q. What is the difference in elevation between the Fairfax Spring and the Potomac Spring?

A. The difference in elevation in the Potomac Spring is 124 7/10 feet higher than the Fairfax Stone.

Q. You have already stated that the Back Bone Mountain is the watershed of the North Branch of the Potomac River. Please state whether or not the Fairfax Stone stands on the Back Bone Mountain?

A. No, it is at a long distance from it, quite a distance from it.

Q. Please state upon what it stands?

A. The spring is upon a point generally designated as Fairfax Knob.

Q. Now, you can proceed generally with what you did next?

A. In connection with the levels I determined the elevation of the southern prong of the River.

1665 (Testimony of Mr. Brown at this point suspended to take the testimony of Mr. Parker Ashby, John Harned, and Jesse

J. Ashby, Jr., placed at the conclusion of Mr. Brown's testimony, which is continued below.)

(Mr. BROWN recalled:) Proceeding I will say in connection with the levels I also determined the elevation of the southern prong of the River, shown upon the plot by courses and distances, adopted, for illustrations from the survey of Mr. Julius K. Monroe, the spring at the head of this stream being designated upon the plot at the point marked October 24th. Beginning at the point marked Zero, Zero, double Zero, I ran a line of actual levels from the summit of the West Virginia Central Railroad at the post formerly mentioned T. C. L. as follows: The Fairfax Summit being 3,066 feet and the spring at the head of the south prong above mentioned, which is marked and designated October 24th, the elevation was 3,144 8/10 feet.

Q. Please state whether or not you made any determinations as to the comparative elevation of the points, other than those you have already mentioned in relation to the Potomac Spring?

A. Yes, I located the Head of Glade Run, which is upon the southeast side of Back Bone Mountain. It is shown on the map marked Glade Run.

Q. How did you determine the elevation of the head of Glade Run?

A. We ran a line of levels from the bench mark which is on the stone 11 feet north of the Potomac Spring to the head spring of Glade Run.

Q. Please explain what you mean by bench mark?

A. Bench mark is any secure permanent object, which is used as a reference in taking levels, usually a notch cut on the root of a tree, or a rock marked with some distinguishing figures.

1666 Q. What is the bench mark on the stone standing eleven feet north of the Potomac Spring?

A. A copper bolt in the stone. I have already given the elevation of that stone.

Q. What was the elevation of that line of levels to the head of Glade Run?

A. The elevation of Glade Run was 3,261 3/10 feet.

Q. Please state into what stream Glade Run flows?

A. Well, it flows into the Cheat River. I also determined the elevation of the summit of Back Bone Mountain above the Potomac Spring.

Q. How did you determine that?

A. From the same point, the bench on the stone eleven feet north of the Potomac Spring, ran to the top of the mountain and found the elevation to be 3,374 8/10 fet. Then I also ascertained the elevation of the head spring of Laurel Run, so marked on the plat, and found it to be 3,228 7/10 feet

Q. How did you determine the elevation of Laurel Run?

A. From the bench mark on the same stone eleven feet north of Potomac Spring?

Q. Did you determine the elevtion of any other point?

A. No, those cover all; of course there were intermediate points covered by the line of the levels, but none others prominent.

Q. Please state whether or not you made any determination as to the width of running water in the Potomac River at the Fairfax branches of the North Branch of the Potomac River?

A. As I have already stated, I measured the width of the stream where the Fairfax Meridian crosses, where the stream crosses to the west of the Fairfax Meridian, and found it to be thirty feet
1667 in width. Then going to Station 31, so designated on the plot, I ran the following courses and distances up the Potomac stream, dropping a pin at the end of each ten feet, measuring the width of running water at right angles to the line as run continuously from one to 300 feet. First north 34 degrees 42 minutes west 80 3/10 feet; second north six degrees 56 minutes west, in all 145 feet; third north 73 degrees 29 minutes west in all 240 feet; fourth south 29 degrees eight minutes west in all 287 feet and five tenths, five, north 63 degrees 37 minutes west in all 300 feet from Station 31. I then returned to Station 31 and ran as before up the Fairfax Stream, dropping a pin every ten feet. First south 80 degrees ten minutes west 89 4/10 feet; second south 58 degrees 47 minutes W. in all 223 6/10 feet; third south 75 degrees 18 minutes west in all three hundred feet from Station thirty-one, and for reference I then ran down the River from Station 31 the following courses, north 80 degrees two minutes east 89 2/10 feet; second south 54 degrees 23 minutes east, in all 202 6/10 feet; third, north 74 degrees 29 minutes east in all three hundred feet from Station 31. Those are the distances. Then returned to Station 31, and measured at intervals of ten feet the width of water as above stated in the Potomac Stream. First, at the distance of 21 feet from Station 31, the water was found to be five feet in width; at thirty feet it was found to be three feet; at 40 feet six feet; at fifty feet seven feet; at sixty feet five feet; at 70 feet ten feet; at eighty feet ten feet; at ninety feet nine feet; at 100 feet six feet; at 110 feet ten feet; at 120 feet four feet; at 130 feet six feet; at 140 feet four feet; at 150 feet 13 feet; at 160 feet seven feet; at 170 feet 12 feet; at 180 feet nine feet; at 190 feet 12 feet; at 200 feet eight feet; at 210 feet ten feet; at 220 feet seven feet; at 230 feet five feet;
1668 at 240 feet six feet; at 250 feet eight feet; at 260 feet 14 feet; at 270 feet 22 feet; at 280 feet 22 feet; at 290 feet 15 feet; at 300 feet eleven feet; or making a total of these measurements together of 266 feet. or an average width for the number of stations of 9 14/100 feet. I then returned to Station 31 and ran in the same manner up the Fairfax run, beginning at twenty feet from Station 31, where I found the water to be 10 feet in width, running water; at 30 feet six feet; at 40 feet eight feet; at 50 feet five feet; at 60 feet four feet; at seventy feet three feet, at eight- feet five feet; at 90 feet ten feet; at 100 feet six feet; at 110 feet five feet; *at 110 feet five feet;* at 120 feet six feet; 130 feet three feet; 140 feet 7 feet; 150 feet four feet; 160 feet seven feet; 170 feet 14 feet; 180 feet eight feet; 190 feet four feet; 200 feet five feet; 210 feet 18 feet; 220 feet ten feet; 230 feet seven feet; 240 feet seven feet; 250 feet five

feet; 260 feet 18 feet; 270 feet 15 feet; 280 feet eleven feet; 290 feet seven feet; 300 feet five feet, or a total measurement of these measurements of 238 feet, or an average width of 8 2/0 feet.

Q. Were these measurements made upon the same or different days?

A. At the same time, one right after the other.

Q. Did you determine the volume of water flowing from the Potomac and Fairfax Streams?

A. No, we did not.

Q. Was any effort made to determine it?

A. We made no effort, no.

Q. Why was such effort not made?

A. On the part of the State of Maryland it was not practicable to do it, and this measurement, the determination of the width of the water, was the best approximation we could make.

1669 Q. Why was it not considered practicable to do it?

A. It is by no means easy to determine the flow of water. That is one of the hardest things you can do, and from the rough character of the stream and all, it was next to impossible, it would have taken a good deal of time and expense.

Q. Did you have the necessary instruments to determine it?

A. No, we did not.

Q. Did the State of West Virginia attempt to do that?

A. Yes, they did.

Q. With what success?

A. No success reported to me, I was not present, but my men were, sent to assist Mr. Monroe and both Mr. Monroe and others in the party reported they had been unable to make any measurements.

Q. Please state whether or not you made any location, by actual survey, of the North Branch of the Potomac River, other than that you have already spoken of?

A. Yes sir, we did.

Q. Please state in detail what you did, and what streams you located by actual survey, and state the result of your location, state fully?

A. By direction of the Counsel for the State of Maryland, I carefully located and laid down by actual survey, using the transit, and taking measurements by means of angles, from the mouth of Laurel Run, to the meridian running north from Fairfax Stone, there connecting with the lines previously run from said Meridian up the River. I began this survey at a solid rock marked with a cross in a circle and the letters W. A. S., said rock being upon the right or southeast bank of the River and near two birch trees marked with four notches each as pointers, and ran up the right bank of

1670 the River; then following the courses and distances which will be included in the return, at the end of the 11th course to a rock marked with a cross and circle, just below the falls in the River, a noted point; thence up the Potomac River at the end of the 56th course to the mouth of Elk Run, entering the River on the south side; at the end of the 64th course to the mouth of Deakins Run, entering the River on the south side; at the end of the 89th

course to a point opposite the Big Elk Lick on the north side of the River. At the end of the 120th line to the mouth of Levering's Run, entering the River on the south side; 176th course at the end of 53 feet on the 176th course a small run enters the River on the left. At the end of the 210th course to a stake marked Zero, Zero, standing at the mouth of the South Prong of *of* the River; at the end of the 236th course a small run enters the River on the south side. At the end of 272nd course to a stake marked No. 1, set at the end of the first course in the previous running of the Potomac from the Fairfax Meridian. From this point the courses have already been given to Fairfax Stone and to Potomac Spring.

Q. What, if any, similar work did you do on Laurel Run?

A. For illustration, I laid down the courses and distances of Laurel Run, using the magnetic needle, beginning at the head Spring of Laurel Run, which is a strong spring, coming out of sand stone rocks, a point designated on the plot as Laurel Run, and in order to make the courses correspond as nearly as may be with the true courses laid out in connection with the other lines of the survey, I made an allowance of three degrees ten minutes to the east, and ran down the center of the run; at the end of 22 8/10 feet on the 79th course of Laurel Run crossed meridian line of Fairfax Stone. At the end of the 85th course to a branch of Laurel Run, entering on the 1671 right bank marked on the plot as Station No. 87, and then I ran from Station 87, I located a short portion of this branch coming in upon the south, located seven courses and then returned to Station 87 and continued down Laurel Run. At the end of 140 feet on the 154th course a large stream enters the left bank of Laurel Run; at the end of 112 feet on the 211th course the north fork of Laurel Run empties on the left bank of the Run, this stream being one of the tributaries of Laurel Run, heading on the Back Bone Mountain. At the end of the 245th course we struck the Potomac River and marked a large flat rock with a cross and circle. I mean we marked the rock.

Mr. PRICE:

Q. You spoke of a rock at the mouth in speaking of the running of the main stream of the North Branch, as marked with a cross and circle; is that the same rock you now speak of?

A. No, that is on the south side of the River, and Laurel Run is on the north side. That is what I was going to add. From this last mentioned rock, following the reference line, run down the River south 88 degrees 20 minutes east 158 6/10 to a solid rock on the right bank of the Potomac River, marked W. A. S. and with a cross and circle. This rock was the same from which we started the survey of the Potomac River.

Q. Did you mark this last mentionedrock?

A. We marked all the rocks.

Q. It was not marked when you wentthere?

A. Oh, no; we marked it for refereice. The object of running the Potomac accurately and Laurel Run was to show the direction of the streams and determine as far aspossible, the water shed and

where the source of the volume of water came, and in running the Meridian Line from the Fairfax Stone we crossed, as has been
1672 seen, the main River at Station Zero, and both branches, as above mentioned, of Laurel Run, all of which headed to the west of Fairfax Meridian.

Direct examination continued:

Q. You mentioned in the outset of your testimony, that in establishing Fairfax Meridian, you first established a trial meridian, and then afterwards corrected it by the true Meridian. Explain what you meant by that?

A. The location of the Meridian, the determination of the astronomical north, was done by Dr. L. A. Bauer, who was employed to assist upon the survey as astronomer and magnetician. He had the most accurate instruments which are now made, which were loaned to the survey by the United States Coast Survey, and in the determination of the true Meridian he made repeated observations—I should say in determining the Fairfax Meridian in this case he made repeated observations upon a number of circum polar stars, extending over a period of several days, and taking the result of these observations, the true or final Meridian was located, using the Backbone Mountain as the station.

Q. Now, is or not Station Zero on the true Meridian, or off of it as established by the observation of Dr. Bauer?

A. The true Fairfax Meridian, it is on the true Fairfax Meridian.

Q. Do you know what star particularly was the basis upon which the Meridian was established, from which calculations were made to establish the Meridian?

A. I think Polaris was used, and used other stars. There are several circum polar stars which are used.

Q. You knew the method he used in determining this Meridian?

A. Well, yes, the method was in general, these stars were observed at elongation and the angle between the star and some fixed
1673 object on the ground measured a lantern signal station at night. The angle is measured, termed az-muth angle, or angle of reference. This same az-muth mark was used repeatedly different nights and the exact angle computed. Then in the daytime the Meridian line was prolonged by measuring horizontally the angle between the az-muth marked and the true Meridian.

A. Was the same system of establishing the true Meridian followed in the matter of running the Meridian from Potomac Springs, shown on the plat Potomac Springs?

A. Yes, except the initial point was there on the summit of the Back Bone Mountain, not far from the Springs.

Q. Is that the last point designated by you on the plat?

A. Yes, marked by a circle with the words Back Bone alongside on the plat.

Q. Do you know or can you say, whether the mode of thus determining the Meridian was the approved scientific way of determining the Meridian?

A. It is the universal way used by the Government for determin-

ing the Meridian. There are other methods, of approximating the Meridian, such as observations on the sun; that is not as accurate as observations on the stars.

Q. What difference, if any, in matter of accuracy, is there between the establishment of a Meridian line by the scientfic method of observation of the stars, and the running of a simple compass line from a certain point?

A. Well, a Meridian line can be reproduced and established accurately after any interval of time, while a magnetic line is constantly changing and almost impossible to reproduce, as the needle is never stationary. The sources of error of the magnetic needle are
1674 a daily change, the needle beginning in the morning and swinging towards the east, in this latitude, this portion of the state of Maryland, and then at eight or nine o'clock it takes the contrary direction and swinging towards the west, and the maximum westerly elongation continues until in the neighborhood of one o'clock, when it takes another turn towards the east, occasionally oscillating. This difference may be anywhere from five to twelve minutes. In my own observation I found it to be twelve minutes between the hours of eight o'clock in the morning and one o'clock at noon. There is also what is termed a secular variation which is a constant change in this latitude towards the west, having been found to be three minutes annually. And there is also a variation as determined by a series of observations in Washington, between the different months of the year. This is much less than the others, but amounting to a few minutes for the different months in the year, being less in January and February, and greater in the summer months. Perhaps the question will come up in regard to the magnetic work as to the term what is declination of the magnetic needle. The declination of the magnetic needle is the horizontal angle which the needle makes at any given point with the true north and the term variation means the change in declination. These terms will be used in the location of the several tracts and other references.

Q. Are there not also other causes of the variation of the needle?

A. Yes, there is one other cause I did not mention, and that is local storms. I have myself observed those while employed in the Coast Survey, published by Dr. Bauer; observations taken in Oakland by Dr. Bauer in 1897 where the variations due to the electrical or magnetic influences, were as much as 16 to 20 minutes in
1675 the course of a few hours. Then there is another influence in magnetic work, from the fact that the needles being differently magnetized, some more powerfully than others, and from other causes, coming from different compasses, will not show the same course on the same line. I know that in cases in Garrett County, where we have a record at the Courthouse, which is made by the surveyor under oath, there is as much difference as 25 minutes in the compasses of different surveyors.

Q. What, if any, effect have ore deposits on the needle?

A. They create disturbances; it is impossible that in cases of any magnetic ore to run a correct line with the needle.

Q. Contrasting now the implements and instruments used by the

surveyors of the present day with those of prior times, what if anything could be said with reference to the relative accuracy of the ancient and modern surveys by reason of it?

A. Well, the modern instruments are far superior to anything that was used even thirty years ago, and the instruments in this case, the eight-inch theodolite, which was used in this survey, is one of the most accurate instruments that can be obtained in the world.

Adjourned to meet at 9:30 A. M. Thursday, July 17, 1902.

Mr. BROWN, recalled, having meanwhile given place on witness stand to George L. Mosser for sake of convenience.

Direct examination continued:

Q. What is the character of the country at the head waters of the North Branch of the Potomac River?

A. Wild and unsettled; wild game was still found there when we were at the Stone. We saw the remains of several bear pens
1676 and saw the tracks of bear, etc. I saw sign of bear with reference to gnawing trees near the bear pens.

Q. Has any change occurred recently in the country?

A. Only from the fact of sawmills coming in, cutting the timber; they are operating now.

Q. How recently have those sawmills gone in[illegible] country?

A. About 18 months ago the first w[illegible] was done, within 18 months.

Q. You are speaking now of the country immediately at the Fairfax Stone and Potomac Spring?

A. The general neighborhood of the head waters of the North Branch.

Q. Do you know the local name given to that country prior to the building of the West Virginia Central and Pittsburg Railway?

A. Well, it was termed the wilderness.

Q. Were any people living in that country prior to the building of the Railroad?

A. There were one or two families, Lloyd Kitzmiller; that has been mentioned before several times; from the head waters of the North Branch, and those were the last settlements for a number of miles, no habitation of clearing whatever. That is towards the southwest, south and southwest.

Q. You have stated that you ran a Meridian Line from Potomac Spring north to the Mason and Dixon Line. Now, just indicate on the plat first, Potomac Meridian. Will you please now give in detail how that work was done, both the astronomical work and the actual running of the lines upon the ground. Make it as full and clear as you can?

1677 A. Having determined, as I have said in previous testimony, that the Potomac Spring, so designated on the plot, was the most westerly and greatest in elevation above tide, and upon the Backbone Mountain, the principal watershed of this section, and the longest stream, it was decided to run the Meridian Line from this

point, and for this work the services of Dr. Bauer, (Dr. L. A. Bauer, who has already been mentioned, competent as an astronomer and magnetician,) and to him was entrusted the laying out of the new Meridian from the Potomac Spring. Dr. Bauer was eminently fitted for this work as he had been a member of the United States Coast Geodetic Survey, and at the time of our obtaining his aid was engaged upon a magnetic work under the director of the Maryland Geological survey. In connection with these surveys, he had in use valuable and accurate instruments belonging to the Coast Geodetic Survey. These instruments, by the courtesy of the Geological Survey Dr. Bauer was permitted to use in the work in this case. In determining the Potomac Meridian, as we have designated this line, the astronomical observations were made on Polaris, near the eastern elongation and when the determination of the Meridian was made, it was prolonged from mountain top to mountain top, by Dr. Bauer using the method of measuring the angle between the back sight and fore sight, I should say the angle of the back sight and fore sight, which had been set approximately in line, that is, the fore sight set approximately in line, and the angle then accurately determined, the angle measured repeatedly, by
1678 the eight-inch position theodolite, in different positions of the circle, with the telescope direct and reversed. With the knowledge of the distance of the fore sight from the observation station, the correction to be applied to the place of the foresight in running was easily determined. A detailed report of the work done by Dr. Bauer will be found appended to the return in this case. After determining the direction of the Meridian from the initial point which was located 495 5/10 feet north of the Potomac Spring, upon the crest of Back Bone Mountain, the line was prolonged to the north of Dr. Bauer and stations marked and located upon Rembold's Hill, Foley's, DeBerry's Hill, Lee's Hill, Taylor's Hill, Fike's Hill, Rodeheaver's Hill, and Robinson's Hill. When these points had been fixed by Dr. Bauer, my work began at the Potomac Spring, and a transit line was run by a system of back sights and fore sights.

Q. Will you kindly explain that system?

A. The method which we used was setting the transit over one meridian point, as determined by Dr. Bauer, the instrument was sighted to the south from previously determined point; then the telescope revolved and the sight taken to the north, the point being marked by tack in a substantial hub driven in the ground. The telescope was then revolved 180 degrees, and a second sight taken upon the object to the south; the telescope revolved and a second tack placed in the northerly hub. If there were any deviation, due to collimation of the instrument, or the levels, the space between the two tracks was divided and a brass tack put between them. This method was very accurate. Sometimes we ran a line of at least three and a half or four miles and came within several tenths of a foot of the point previously established by Dr. Bauer. I might say in this
1679 connection that all points, intermediate points between the astronomical point fixed by Dr. Bauer, which deviated from the line when produced, we corrected, and all stakes were placed

in the true meridian line by method of multiplying the tanget of the angle of the deviation by the distance north of the Potomac Spring.

Q. Please proceed with your testimony since you have described the system?

A. The first transit station occupied by me on the Potomac Meridian was upon the summit of Back Bone Mountain, from the Meridian station established by Dr. Bauer where a rock was planted, with a copper bolt and back sight taken on Potomac Station. At a point in the Meridian eleven feet north of Potomac Spring, we planted a rock 12 by 12 inches, three and a half feet in the ground, and in the center of this rock the Meridian is marked by a copper bolt through the center. All measurements of distances upon the survey, on the part of Maryland, are taken from the Potomac Spring, as the initial point, and any point upon the plot is designated and located by its latitude, (the distance north from the Potomac Spring and its departure, its distance east or west from the Potomac Spring." The measurements of the distances upon the ground were all made with standard steel tape, the length of which had been compared with the United States Government standard; the sights or rods which were used in this case, were made especially for the purpose and consisted of a tripod from which was suspended a heavy plumb line, attached to a small rod about a half inch in diameter, and six inches long, which was used as the sight. These are very accurate. Beginning the measurements from the Potomac Spring, the summit of Back Bone Mountain, marked by a station which has been mentioned, was 495 9/10 feet. We then ran down the west face of the mountain 4,615.2/10 feet to a stake marked
1680 No. 1 on the north side of the County road leading to Thomas, West Virginia. At 5280 feet we set a stake at the end of the first mile, marking it first mile. It is designated upon the plat marked one mile. At 7099 feet to a stake marked No. 2 on the south side of the road to Lead Mine Run, West Virginia; 8800 feet to a branch of Wolfe Creek, 10,560 feet to a stake marked second mile, on the plat; 11400 feet to the north fork of Wolfe Creek. 14194 feet to a stake No. 3 on the north side of the County road; 15,840 feet to a stake marked third mile, marked on the plat in each case. (The mile marks are marked on the plat by a circle and the designation of the number of miles north of the Potomac Spring.) 17,753 3/10 feet to an established point in the Potomac Meridian on Rembolt's *B*ill. This point is designated on the plot by the words "Rembolt's Hill," and from it the first tie or reference line, at right angles to the Potomac Meridian, was run east to Fairfax Meridian. I would state that we have five of these tie, or reference lines, which were run across to the east from the Potomac Meridian. They are all designated upon the map as the first, second, third, fourth and fifth tie lines. They will be referred to in the course of the testimony. In order to preserve permanently this station in Meridian upon Rembold's *B*ill, I carried the line back 27 6/10 feet and planted a large stone with a copper bolt. This stone is five by eight inches, and two and a half feet long and was sunk six inches below the surface

of the ground. The copper bolt was leaded in and a cross was cut upon the top of the meridian. References to the objects upon the ground were taken so that in the future this stone could be located and found. 18259 feet to a stake No. 4, on the north side of the County road leading to the Horseshoe Run, West Virginia; 20,727 feet to a stake No. 5, on the north side of the road leading from Oakland to Horseshoe Run; 21120 feet to the fourth mile
1681 stake, so marked upon the plot. 25325 feet to the center of Maple Run, flowing east. 25,895 5/10 feet to a stake No. 6 near John Fike's. 26,255 7/10 feet to a stake No. 7 on the north side of the road to Eglon. 26,400 feet to the fifth mile stake in John Fike's field. 28,960 feet to the top of Lewis Bush Hill. I planted a stone at this point, eight by ten inches, 2½ feet long, just below the surface of the ground, marking the meridian with a copper bolt with cross. References were taken to relocate this stone. 31,108 8/10 feet to the stake No. 8 on the north side of the road leading to Oakland. 31,640 feet to the sixth mile stake. 32,816 5/10 feet to a stake No. 9 on the north side of the County road leading from Oakland to Eglon. 36,960 feet to the 7th mile stake. 37,888 6/10 feet to a hub marked second tie line. 38,281 feet to a stake and hub marked 38,281. 39,600 feet to the 7½ mile stake. From this point on we set a stake every half mile. Up to this mile the country had been wild, woody and rough, but here we came to a more settled and open country. 40,760 feet to a stake on the south side of the Northwestern Turnpike. 40,850 feet to a stake No. 11 on the north side of the Northwestern Turnpike. At a distance of 40,844 8/10 feet north of the Potomac Spring, I planted a stone with a copper bolt with cross in meridian. This stone is below the surface of the ground on the north side of the Northwestern Pike. 42,240 feet to the eighth mile stake. 42,650 feet to Rhine Creek, it should be Rhine Creek, and is so spelled on the general maps. It is Rhine Fork of the Youghiogheny River. 42,929 5/10 feet to a stake No. 12 on the north side of the County Road leading to Oakland. 44,880 feet to the 8½ mile stake. 46,998 feet to the Potomac Meridian Station on the top of Foley Mountain, this being the first station occupied by Dr. Bauer north of the Back Bone Moun-
1682 tain, as an az-muth station. I planted at this point a sandstone rock eight by 14 inches below the surface. The stone as planted, was embedded in broken stone. A copper bolt is inserted marked by a cross in meridian. Upon the top of this rock a flat stone was placed and the whole covered with a mound of earth and stone. 47,520 feet to the 9th mile stake. 50,160 feet to the 9½ mile stake. 52,800 feet to the 10th mile stake. 55,440 feet to the 10½ mile stake. 57,191 feet to stake No. 13 on the north side of the Preston Lumber & Coal Company Railroad. 57,390 feet to the center of Laurel Run flowing east. 58,080 feet to the 11th mile stake. 60,200 feet to a branch of Laurel Run flowing east. 60,720 feet to the 11½ mile stake. 61,433 feet to a hub in Samuel Cran's land. 63,360 feet to the 12th mile stake. 65,465 feet to a branch of Laurel Run flowing east. 65,617 feet to stake No. 14 on the south side of the County road from Corinth to Nordick's School-

house. 66,000 feet to the 12½ mile stake on the north side of the County road. 68,640 feet to the 13th mile stake. 70,223 6/10 feet to a point in the Potomac Meridian established on Samuel DeBerry's Hill. At this point we planted a rock, five by seven inches and three feet long, allowing it to project four inches above ground, inserting a copper bolt marking it with a cross. 71,280 feet to the 13½ mile stake. 73,920 feet to the 14th mile stake. 76,560 feet to the 14½ mile stake. 77,250 to a hub and stake marked 77,250. 77,947 5/10 feet to a hub marked the third tie line, and so designated on the map. 79,200 feet to the center of Snowy Creek and the end of the 15th mile. The stake was set up on the north bank of the stream which flows east. 79,995 feet to stake No. 15, standing on the south side of the right of way of the Baltimore & Ohio Railroad.

80,750 feet to a stake No. 17 on the north side of the Oak-
1683 land and Terra Alta Road. 81,840 feet to the 15½ mile stake. 84,480 feet to 16 mile stake. 86,190 feet to stake No. 18 on the north side of the road from Morrison's to Griffith. 86,500 feet to the north branch of Snowy Creek, flowing west. 87,120 feet to the 16½ mile stake. 89,760 feet to the 17th mile stake. 92,027 feet to stake No. 19 on the north side of the road from Terra Alta to Snaggy Mountain. 92,400 feet to the 17½ mile stake. 93,277 feet to a hub standing west of Snaggy Mountain. 94,766 feet to stake No. 20 on the north side of the County road, leading from Terra Alta to Cranesville. 95,040 feet to the 18 mile stake. 97,680 feet to the 18½ mile stake. 100,325 feet to the 19th mile stake on the north side of the old Burchinal Road. 101,825 3/10 feet to a point established by Dr. Bauer in the Potomac Meridian upon Lee's Hill. I carried the line back 37½ feet, or to the end of 101,787 8/10 feet and planted a rock level with the surface of the ground, marking the rock with a cross in the meridian. 102,965 feet to the 19½ mile stake. 104,465 feet to Spruce Run, flowing east. 105,600 feet to the 20th mile stake on the south slope of Taylor's Hill. 106,725 3/10 feet to a point in the Potomac Meridian marked by Dr. Bauer on Taylor's Hill, and occupied by him as one of the azimuth stations. Here I planted a sandstone rock, six by eight inches, two and one half feet long. This rock is on solid foundation and the top of the rock is one foot below the surface of the ground. It is planted with broken stone, a copper bolt inserted in the rock marked with a cross in meridian. The whole is covered with a mound of loose stone and earth. 108,240 feet to the 20½ mile stake. 108,485 feet to stake No. 22, standing on the north side of Gregg's Road, leading

to Cranesville. 108,705 feet to Cuppet's Run flowing east.
1684 110,880 feet to the 21 mile stake. 111,350 feet to Hoye's Run, flowing east. 111,750 feet to stake No. 23, standing on the north side of the county road. 113,520 feet to the 21½ mile stake. 116,160 ft. to 22 mile stake. 118,800 feet to the 22½ mile stake. 119,590 feet to stake No. 25 on the north side of the road from Cranesville to Terra Alta. 121,440 feet to the 23 mile stake. 121,490 feet to stake No. 25 on the north side of the road from Cranesville to Henry. 123,828 1/10 feet to hub in the fourth tie line. 123,828 5/10 feet to a hub in the Potomac Meridian. 124,080

feet to the 23½ mile stake. 125,220 feet to stake No. 26 on the North side of Pine Swamp Knob Road. 126,720 ft. to the 24 mile stake. 127,201 8/10 feet to a point established by Dr. Bauer in the Potomac Meridian upon the south face of Fike's Hill. 128,378 2/10 feet to a copper bolt planted in a natural rock on Fike's Hill, with a cross on bolt marking meridian. 129,074 feet to a copper bolt planted in a large natural rock with a cross on the bolt, marking the meridian. This latter point was occupied by Dr. Bauer as an az-muth station. 129,360 feet to the 24½ mile stake on the north brow of Fike's Hill, near a hanging ledge of rock. 132,000 feet to the 25th mile stake. 134,640 feet to the 25½ mile stake. To the 26th mile stake 137,280 feet, 139,920 feet to Beaver Creek, flowing west. 139,920 feet to the 26½ mile stake. 142,560 feet to the 27th mile stake, near a road from Hazleton to Cranesville. 142,700 feet to stake No. 27 on the north side of Hazleton Cranesville Road; at this point we set a copper bolt in a natural ledge of rock, marking cross on the bolt in meridian. 145,200 feet to the 27½ mile stake. 145,300 feet to stake No. 28 on the north side of the road to Friendsville. 146,037 2/10 feet to a point on Rodehaver's Hill, established by Dr. Bauer in the Potomac Meridian. At this point I set a rock five by six inches 2½ feet long, the top of rock being one foot
1685 under the surface of the ground, and inserted a copper bolt with cross in meridian. This rock is in a cleared field near a cemetery and graveyard. I took references to the rock so as to recover the position at any future time. 147,840 feet to the 28th mile stake. 150,480 feet to the 28½ mile stake. 151,150 feet to stake No. 29 on the north side of the county road. 153,120 feet to the 29th mile stake. 154,475 feet to a branch of Mill Run flowing west. 154,935 feet to another branch of Mill Run, flowing west. 155,750 feet to the 29½ mile stake. 158,000 feet to a small run flowing west. 158,400 feet to the 30th mile stake. 158,894 feet to stake No. 30 on the north side of the road from Terra Alta to Friendsville. 159,271 3/10 feet to a hub on William Arthurs Hill. 160,910 feet to a small run flowing west. 161,040 feet to the 30½ mile stake. 162,300 feet to the top of Spiker's Hill. 163,680 feet to the 31st mile stake near the top of a cleared hill. 165,040 feet to a small run flowing west. 166,320 to the 31½ mile stake. 167,730 feet to a branch of Laurel Run, flowing west. 167,775 feet to another branch of Laurel Run, flowing west. 168,960 feet to the 32 mile stake. 170,175 feet to stake No. 31 on the north side of the county road leading to Freindsville. 171,600 feet to the 32½ mile stake in Spurgeon's field. 171,750 feet to small run flowing west. 173,565 feet to stake No. 32 on the north side of the County Road from Robinson's to Frazee. 174,068 feet to a small run flowing west. 174,240 feet to the 33 mile stake, near Robinson's meadow. 175,100 feet to stake No. 33 on the north side of Markeleyburg road. 175,119 feet to a point on the Potomac Meridian established by Dr. Bauer upon Robinson's Hill. At this point we planted a rock eight by ten inches and 32 inches long, in the top, which is one foot below the surface of the ground, a copper bolt was inserted and the
1686 meridian marked by cross on the bolt. I took references from this to a number of places so that it could be recovered

at any future time. This was the last point established by Dr. Bauer on the Potomac Meridian. From there the transit line was carried north by me in the same method as formally explained, and subsequently checked from Cuppet's Hill by a long back sight to Fike's Hill Station, and found to be exactly in the true meridian. 176,880 feet to the 33½ mile stake in Spurgeon's cleared field. 178,900 feet to a small run flowing west. 179,250 feet to stake No. 34 on the north side of the Mud Pike. 179,520 feet to the 34th mile stake. 180,200 feet to a small run flowing west. 181,383 feet to a stake No. 35 on the north side of road from Five Forks to Mud Pike. 182,140 feet to stump of an apple tree in which we drove a needle marking meridian. 182,160 feet to the 34½ mile stake in A. R. Cuppet's orchard. 182,515 4/10 feet to a point in the Potomac Meridian upon Cuppet's Hill at which point I planted a stone four by six inches and 28 inches long. The top of this stone is eight inches below the surface of the ground and is marked by copper bolt in meridian. From this stone I took references to several objects, so that it could be relocated at any time. 183,070 45/100 feet to the Mason and Dixon Line, this point being as nearly as could be located by us in the true latitude of the above line. 183,079 7/10 feet to a point where I planted a stone, six by six inches, projecting six inches above ground and marking the top in the line of the Potomac Meridian; planted nine feet north of the Mason and Dixon Line in the boundary of Pennsylvania, as nearly as we could locate it at the time.

Q. You have mentioned certain tie lines and show them on your plat. Between what points are these tie lines run and for what purposes?

1687 A. For the purpose of locating the several ejeck stations, reference lines, tracts of lands and military lots, and points in the line as run by Mr. Julius K. Monroe on the part of the State of West Virginia. I found it convenient and necessary to run upon the ground certain section of a meridian of the Fairfax Stone and to have points established whose relation to the Potomac Spring was known. This was accomplished by running perpendiculars from stations on the Potomac Meridian as I have mentioned in the previous station.

Q. Perpendiculars in what direction?

A. Perpendiculars at right angles to the Potomac Meridian, to the east. Distances are located by true latitude and departure in reference to Potomac Spring. Five such perpendiculars as I have mentioned were run at the points marked in the Potomac Meridian and in the Fairfax Meridian. The first was station upon Rembold's Hill, which is 17,754 3/10 feet north of Potomac Spring. The corresponding point upon the Fairfax Meridian was found by triangulation to be 5,977 1/10 feet east of the Potomac Meridian and the station upon Back Bone Mountain to be 7,924 feet north of the Potomac Spring and 5,978 8/10 feet east. The second perpendicular was run from the Potomac Meridian, from a station 37,888 6/10 feet north of the Potomac Spring to a hub in the Fairfax Meridian, near the Michler monument on the north side of the northwestern Turnpike marked on the map by black letters XG. From the hub XG, the

Fairfax Meridian was run south by actual survey on the ground to Dawson's Hill and was then extended north as far as Ashby's Hill, references being taken from the Meridian thus run to the Monroe Line, Military lots, several land tracts, and other points. The third perpendicular was north of the Baltimore & Ohio Railroad, and was
1688 run from station on the Potomac Meridian 77947 5/10 feet north of the Potomac Spring to a hub, designated upon the plot as XN in the Fairfax Meridian, whose departure is 5963 feet. The Fairfax Meridian was then run south for 285 feet from said station to a point where we planted a rock designated upon the plot as Rock C, and from said point C the Meridian was prolonged north for more than a mile, references were taken from it to the Monroe line and the land tracts. The fourth perpendicular or tie line north of Cranesville, was run from a station in the Potomac Meridian, 123,828 5/10 feet north of Potomac Spring to a hub, designated XR, on the plot, in the Fairfax Meridian, the departure of which is 5,952 3/10 feet east. We then ran *ran* south 397 5/10 feet in the Meridian and planted a rock designated upon the plot as Rock D, the latitude of which is 123,449 feet, and the departure 5,952 3/10 feet east. We then prolonged the meridian north from Rock D for more than a mile to hub designated XS on the plot, in the Potomac Meridian, the latitude of which is 129,436 2/10 feet and the departure is 5951 1/10 feet. On the fifth tie line the perpendicular was run from a station on Arthurs Hill, 159,271 3/10 feet north of Potomac Spring to the hub designated H*y*b Y upon the plot in black letters, being situated in the Fairfax Meridian. The departure of this point is 5944 feet east; from H*y*b Y we ran south on the Meridian for over a mile, taking references at several points. Then returning to the Hub Y, we ran north as far as Sickles Hill, establishing points in the Meridian for references. That describes the tie lines.

Testimony of Mr. Brown suspended at this point to permit of the taking of the testimony of Richard T. Browning.

1689 Testimony of Mr. BROWN resumed.

Continued direct examination:

Q. What variance, if any, from the true meridian line did you find in the Michler meridian?

A. Well, there was lots of variation after leaving Lauer Hill.

Q. Is or is not that variation mentioned or referred in Prof. Bauer's report?

A. Yes sir, it is.

Q. Was any other variation noticed?

A. Well, it was continuous diverg*a*nce from that point, very slight, but it was noted at Lauer Hill.

Q. What if any variation from a direct meridian line did your observations discover in Monroe line?

A. Well, that at various points to which I have referred, with reference to the Monroe line, I found that starting at Fairfax Stone the lines run by Mr. Monroe diverged very rapidly from Fairfax

Meridian, the cause being that there was found to be quite a large difference in the declination of the magnetic needle at the Fairfax Stone and the Mason and Dixon Line. At the Fairfax Stone in 1897, the declination was three degrees five and two tenth minutes west, while at the Mason and Dixon Line, or at a point which was 274 feet north of the Mason and Dixon Line, that point being selected on account of the convenience to the station, the declination was three degrees 47 5/10 minutes west, or a difference of about 42 minutes between the direction of the needle at Fairfax Stone and at Mason and Dixon Line. Between those two points there was a constant change in declination. Mr. Monroe in running his line ran with a constant allowance of three degrees and forty minutes, and starting at Fairfax Stone this carried his line to the east of
1690 the true Meridian at the rate of 72 feet for the first mile and continuing north the declination changing becoming larger, and at Lauer Hill the declination was three degrees and sixteen minutes and seven-tenths. Snaggy Mountain the declination was three degrees 37 minutes and two-tenths. At Fike's Hill it was three degrees forty minutes and three tenths. It will be seen that Mr. Monroe's line at this point would be running very nearly parallel with the Meridian Line; in other words, starting at the Fairfax Stone in running of a meridian line, a curve line had been run as he proceeded north. This is proved by references which we took and which will be spoken of later. From the meridian line these points were all determined. These figures were all determined by Dr. Bauer, with the accurate instruments of the United States Coast Survey, and reported to me as the result of his work, and the declinations here given are the mean declinations of the day, taking into consideration the diurnal variations which I mentioned previously in my testimony.

Q. These variations from the meridian line that are observed in the Monroe line are the result, are they not, of the method of running the line by compass?

A. Yes sir, they are. I have here a complete table of all the points upon which I checked Mr. Monroe's line. The points to which I ran, making the checks, were almost universally pointed out by Mr. Monroe himself on the ground with him, designated as his stakes, We found the stakes. The following is a statement of the perpendicular distances of certain stakes, set by Mr. Monroe, when running his line in 1894. To a corresponding point in the Fairfax Meridian with the latitude and departure of said stakes, as referred to the Potomac Spring.

1691

Distance on Monroe line.	Station.	Perpendicular distance.	Latitude.	Departure.
000 feet	"Fairfax Stone"..	000 feet	7168 ft.	S. 5982.8 ft. E.
3993.7 "	Potomac River....	663.8 "	3148 "	S. 6045.6 " "
6000 "	Arnold Ridge ...	83.1 "	1168 "	" 6064.5 " "
15092.6 "	Back Bone Mt...	207.8 "	2924 "	N. 6186.6 " "
31640 "	Six Miles.....	428.3		
36960 "	Seven Miles.....	497.8		
42240 "	Eight Miles.....	554.2	35698 "	" 6527 " "
44880 "	Near Pike.....	593.1	38296 "	" 6565.4 " "
48630 "	Offut's Hill.....	636.1	41652 "	" 6607.5 " "
51186 "	Stahl's Hill.....	664.3	44272 "	" 6635.1 " "
58080 "	Eleven Miles.....	751.8 "	51023 "	" 6721 " "
84480 "	Sixteen Miles.....	1014.9	77674 "	" 6877.9 " "
90565 "	Thomas & Ann..	1068.5 "	83804 "	" 7030.1 " "
105600 "	Twenty Miles.....	1204.7 "		
120483 "	Elzey.....	1294.3		
129360 "	Cranesville.....	1327.8 "	122257 "	" 7280.4 " "
136801 "	Hazleton Road...	1356.3 "	129456 "	" 7307.4 " "
163680 "	Thirty-one miles	1419 "	156049 "	" 7363.8 " "
172753 "	Cherry Hill.....	1436 "	165215 "	" 7378.6 " "
179520 "	Thirty-four Miles	1449.1		
190438.9 "	Mason & Dixon Line	1462.1	183070 "	" 7400.8 " "

1692 I would like to make a statement concerning the above distances. At the Fairfax Stone the difference, of course, is zero between the Meridian and Mr. Monroe's line. Twenty miles north at Snaggy Mountain the distance of Mr. Monroe's line east of Fairfax Meridian was 1204 7/10 feet, while at the Mason & Dixon Line the distances east of the Fairfax Meridian was 1462 1/10 feet. From the 20th mile to the Mason & Dixon Line, the magnetic declination of the Meridian and the course run by Mr. Monroe are very nearly parallel.

Q. I notice that on your plat there is no indication of the line that has been mentioned in the testimony as the Deakin line. Why was not that laid down upon the plat?

A. Because there was no meridian line and not acknowledged as the line by the State of Maryland, and is not shown as a continuous line on certain land plots made by Deakins and points which were shown in certain cases as being in a supposed old line were not in one and the same straight line.

Question and answer objected to as incompetent.

Q. Have you ever seen Deakins' plot of Military Lots?

A. I have seen it at Annapolis.

Q. On that plat, as I understand you, it does not show a continuous straight line along the western frontage of the Military Lots?

A. Not as I remember it.

Q. Could there be a meridian line, unless it was a continuous straight line?

A. No, a meridian line is an astronomical line. I further proved in the work which was brought out in the running of the so-called Military Lots that the western line of these lots are not in one and the same straight line, that their western boundaries vary, and are at different distances from the meridian line.

1693 Q. Please take up the matter in detail and show the differences in distances?

A. The first Military Lot to which I took reference was the beginning of Military Lot 1101 which I found to be 85 feet to the east of Fairfax Meridian. The second lot was the westernmost line, or the end of the first line, of Military Lot 316, and the first line was found to be 42,276 feet north and 6924 1/10 feet east of the Potomac Spring, and being at the same time 952 8/10 feet east of Fairfax Meridian. The next lot located was lot 317, which joins 316 and the third lot was 318, which joins 317. There is no material difference in the position of those lots; we located the block of these three lots at this point.

Q. Are the western outlines of those three lots in the same straight line?

A. In the same straight line to all intents and purposes because the distance is so short. The next lot which I located was Military lot 1237, beginning at the beginning of said lot and running to the end of the first line. The second, or westernmost line, the latitude of which was 84,849 feet north, and the departure 7,137 7/10 feet east of the Potomac Springs, the perpendicular distance east of the Fairfax Meridian being at the end of the first line 11761/10 feet east of the Fairfax Meridian. I also located Military Lots 1238, 1239 and 1240, forming this block of lots, all adjoining.

Q. Are the western outlines of those lots in the same direction?

A. They are practically in the same north and south line, the outline of the block of lots. I next located Military Lot 1347 by actual survey. I began the location of said Military Lot 1447 at its original beginning, which point is shown upon the plats at Black M, it being the end of the second line of the Diadem referred to elsewhere in my returns, and ran first north nine degrees east

1694 30 perches; second south 69 degrees east 40 perches; third, north 110 perches; fourth west 100 perches. The remaining lines of Lot 1447 were laid down by protraction for illustration. The first four lines of said lot are shown by solid black lines, and the remaining lines by black broken lines, numbered from one to six, both inclusive, and said land is designated lot 1447 upon the plot within said lines. Next I located Military Lots No. 1445, 1449, 1450, 1451 and 1462.

Q. Do the original certificates for the lots which you have just mentioned call for each and hang from each other?

A. Yes, they do; they hang from lot 1447. The beginnings of Military Lot 1448 and 1449 were located by actual survey, having also been determined by survey as standing at the end of the fourth line of Military Lot 1447, and shown upon the plot at black N.

These several lots are shown upon the plot by black broken lines, and designated within said lines lots 1448, 1449, 1450, 1451 and 1462. I then located by actual survey the first line, as well as the beginning, of Military Lot No. 1463, according to the certificate of award for said lot, as follows: I began at the beginning of Military Lot 1448, it being also at the end of the fourth line of Lot 1447, designated upon the plot at black N, and run thence west 146 perches to the end of said first line, the remaining lines being laid down by protraction for illustration, numbered with black figures from one to five both inclusive and within said lines said lot is designated lot 1463. The end of the first line of Lot 1463 is shown upon the plot at black U, and the latitude of the stake standing at this point is 129,436 2/10 feet north, and the departure 8672 3/10 feet east of Potomac Spring, it being at the same time 2721 2/10 feet east of the Fairfax Meridian.

That completes the location of that block of lots. I would
1695 like to add there in the testimony that the end of the first line of lot 1463 is the western line and is as far west as any portion of this block of lots. There are no lots further west. I then located by actual survey Military Lot 2952, according to the courses and distances and calls shown in the certificate of award for said lot, as follows: I began the location of said lot at the end of 34 perches on the first line of a tract of land called Cherry Hill, granted to William Deakins, Jr., said point being designated upon the plot at black O, and ran thence first south 117 perches; second east 80 perches; third north 78 perches to the second line of Cherry Hill; fourth, north 30 degrees west 34 perches; five, then by a straight line to the beginning. The lines of said lot are shown upon the plot by solid black lines numbered from one to five, both inclusive, and within said lines said lot is designated lot 2952. The beginning of this lot at the point marked black O and the first line of said Lot, which is the western limit of the tract, are latitude 159,908 3/10 feet north, and departure 9,567 2/10 feet east of the Potomac Spring, and the perpendicular distance from the Fairfax Meridian to the beginning of the lot is 3623 3/10 feet. By comparison of these departures it will be seen that there is a difference between that of Military Lot 1101 and Lot 2952 of 2636 2/10 feet, and the lots which have been thus located are all the westernmost lots as laid off for the State of Maryland by Francis Deakins.

Adjourned.

1696 Mr. BROWN recalled.

Continuation of direct examination by PLAINTIFF:

Q. You have spoken in your previous testimony of the work that was done towards the reproduction and location of the Michler line. Is there anything further that you desire to add in that connection?

A. Dr. L. E. Bauer, whose assistance I have already mention-, so competent as astronomer, ran the two meridians, both of Potomac Meridian and the Fairfax Meridian, beginning at the Potomac

Spring and the Fairfax Stone respectively. His method of operation was in each case; the Back Bone Mountain, being the highest and most available point near to the initial points of the lines was to select that as the first or principal station, and observations were made from the summit of the Back Bone Mountain in each case, and from there the Fairfax Meridian, to which we now refer, was prolonged from mountain top to mountain top. Points were marked on the Fairfax Meridian, first at the Fairfax Stone, upon Arnold's Ridge, the Back Bone Mountain, the Northwestern Pike, Stahl's Hill, Ashby's Hill, Lauer's Hill, hill north of the B & O. Railroad near the old State road, Snaggy Mountain, hill near Cranesville, being a part of Nettle Ridge, Fike's Hill, Owen's Hill, Sickle's Hill, Mason and Dixon Line, and also a point 274 7/10 feet north of the Pennsylvania line was marked for reference. As the two meridians are true north and south lines they will continue to approach, as they proceed north, owing to the curviture of the earth, and at the present rate of one and decimal .229 thousand feet per mile, the angle of convergance being 49 seconds, and may be considered as a constant for the entire line. There is a slight error in this, but such a small one that for all practical purposes on the ground it is considered a constant, and as the two meridians are so close to each other, the perpendicular distances between them may be regarded as
1697 the distance along a parallel of latitude. Knowing the distances south from Rembold's Hill, to the Potomac Stone, it was computed that the perpendicular distance between the two meridians at Potomac Stone is 5981 1/10 feet. These figures are adopted as the initial distances between the two meridians. The actual distances as measured by myself and Mr. Ashby on the Mason and Dixon Line, as nearly as we could expect to reproduce it by running between existing monuments, was 5940 3/10 feet. I have already stated that from the Potomac Meridian I ran perpendicular check lines to the Fairfax Meridian, and then took reference to points north and south from their intersections. I ran only small portions of the Fairfax Meridian actually on the surveys, that is, consecutively. I did, however, begin at the Fairfax Stone and run as far as the summit of the Back Bone Mountain, a distance of two and eight-tenth miles. At the end of 4020 feet, crossing the Potomac River, as I have mentioned before and at the end of 2 8/10 miles, crossing Laurel Run, one of the principal tributaries of the upper Potomac River, that is, the North Branch of the Potomac River. This work was done in order to demonstrate the fact that not only the Potomac River proper, but also its chief tributary rises west of the Fairfax Meridian, and that the Fairfax Stone is quite a long distance from the watershed. The marks and monuments which I have mentioned as located along the Fairfax Meridian were used as reference points in determining other locations in the survey that will be described later and the Fairfax Meridian was also the basis of our magnetic work because that was the nearest meridian line run by us to the line run by the State of West Virginia and to numerous military lots and tracts which were surveyed later. The certified copy of the report of Lieutenant Michler's survey states that the

monument set by him as marking the intersection of the
1698 Fairfax Meridian with the Mason & Dixon line actually stood 28 8/10 inches off the true meridian, according to his work. According to the work of Dr. Bauer, which will be given in full detail in his report, the Fairfax Meridian was 13 25/100 feet west of the point designated as correct by Lieutenant Michler's report. In order to obtain other points in the Mason & Dixon Line as nearly as might be, I ran a transit line between certain stone monuments marking the line. These monuments are square stones about 1 by one and 18 inches, standing in the center of large mounds of stone. These stones were set in a survey by the State of Pennsylvania in 1885, that is, these particular stones, and they are indicated upon the map by circles beginning on the west 53 1/10, 54 2/10, 55 2/10. There are three of these stones to which I ran. I have already stated the distance that I found the Fairfax Meridian to the east of the Potomac Meridian, at the Mason and Dixon Line. I began measurements again at the intersection of the Fairfax Meridian and measured east along the Mason & Dixon Line 1462 feet to a point 4 25/100 feet north of a stake showed me by Mr. Julius K. Monroe, surveyor on the part of the State of West Virginia, as the stake set by him in 1894, as being the northermost point of the line as run by him, and supposed to stand in the Mason & Dixon Line. I have stated that the point to which I measured is marked M. L. in black upon the plat, that is Mr. Monroe's line, large black letters marked M. L. I continued and at 2770 feet was shown a point marked W. Z. upon the plot where Abram J. Thomas said the old line intersected the Mason & Dixon Line.

Objection by defendant as to the statement of Mr. Abram J. Thomas.

I continued east in all 3991 9/10 feet to a stone marked 55.2
upon the plot and the black letters W. W. on the plot. This
1699 stone stands in an old mound of earth and was shown me by Abram J. Thomas as a Deakins Mound.

Objection as to statement of Abram J. Thomas.

Q. Is the distance which you have mentioned, the distance east of the Michler or Fairfax Meridian?

A. Yes sir, it is.

Mr. PRICE:

Q. That was shown you as a Deakins mound?

A. As a Deakins mound, yes sir, as a Deakins mound in the Mason & Dixon Line.

For PLAINTIFF:

Q. Please state whether or not Abram J. Thomas pointed out that to you as the intersection of the Deakins Line with the Mason & Dixon Line?

A. Well, no, he did not, not directly. He told me that it was a Deakins Mound, put there by Deakins, but how and where he did not say.

Mr. PRICE:

Q. I understand you to say that he pointed out to you the point marked W. Z. on the plat as the point of intersection of the old line?
A. Of the old line, but not the Deakins line.

Defendant objects to last answer.

Mr. Abram J. Thomas was present and hauled that stone there, helped to plant it in the year 1885, for the State of Pennsylvania, or in that interest. The stone is marked Pa. 1885 on the north side and the distance, 55 2/10 miles is also marked upon the stone; it is 18 inches square and four feet above the ground and he says it is planted four feet below. This rock stands in an old mound of stones and dirt, and Mr. Thomas was shown the mound by his
1700 father and an old gentleman by the name of John Cuppet, and it was shown to him as being the mound marking the western line of the most northern tier of military Lots in Maryland; that is what he told me.

Defendant objects to statement of Abram J. Thomas.

For PLAINTIFF:

Q. Did or not Abram J. Thomas at that time say that his father and Mr. Cuppett were dead?
A. Oh, yes sir, they had been dead;— Abram J. Thomas was 74 years old in 1897. These other men had been dead for a number of years. He says he was shown this mound by old man Cuppett and who was father of the present John Cuppett, who was also an old man. That was the statement. In other words, I was trying to get traditional testimony, and I got it.
Q. In making your survey, did you locate any of the land grants, either from the State of Maryland, or the State of Virginia, and if so, please state what tracts you located, and how you located them and who pointed out the beginnings of the several tracts which you located, and how they are marked on the plat?
A. I did locate tracts which were patented both by the State of Maryland and also others by the State of Virginia. The first tract to be located was granted by the State of Maryland on the 14th day of May, 1887, to Thomas Hall and called The Toyal Charlotte. I began the location of said tract at an anciently bounded white oak tree pointed out to me by Jacob P. Ganer, a witness produced upon the ground on behalf of the State of Maryland as the beginning of said tract called "The Royal Charlotte," standing at the end of the 81st line of the Lirdship Manors, on the Youghiogheny River, and I ran according to the original courses and distances and calls the first line north 26 degrees east—I should have said this be-
1701 ginning is marked upon the plot by block A. I ran north 26 degrees east 882 perches to a planted stone marked L. P. shown me by Solomon Yutzy, a witness produced upon the ground, as the end of the first line of Royal Charlotte.

Defendant objects to statement that the stone was shown witness by Solomon Yutzy as the end of the first line of the Royal Charlotte.

(WITNESS:) Second, north 84 degrees west 355 perches; third line, south 26 degrees west 944 perches. At the end of 42 perches on the third line, I located the end of the first line of Military Lot No. 317, setting a stake at that point, which is designated upon the plot by the circle at the letter J. At the end of 122 perches on said third line, I located the beginning of Military Lots Nos. 316 and 317, and planted a stake at said point. This point, the beginning of lots 316 and 317 is marked on the plot at the black letter I. At the end of 324 perches on said line I located the end of the first line of Military Lot No. 316 and planted a stake at that point, marking the stake End of First Line 316. At the end of 451½ perches on said third line, I crossed the Fairfax Meridian, heretofore referred to, setting a stake at the point of intersection.

Q. Is that point of intersection marked upon the plat?

A. Marked with black circle and the letters black letters XI. The fourth line was run by a straight line to the beginning.

Q. You have stated that Solomon Yutzy pointed out to you a planted stone marked L. P. at the end of the first line of Royal Charlotte. Is Mr. Yutzy living or dead?

A. He is dead. The tract The Royal Charlotte is shown upon the black lines at A, and running around, numbered one to 34. The Royal Charlotte is located upon the plot from the intersection of this third line, at the end of 451½ perches, with the Fairfax
1702 Meridian at a stake, which is by latitude 40,412 6/10 feet north of the Potomac Spring, and its departure 5,971 7/10 feet east of the Potomac Spring. That finishes the Royal Charlotte.

Q. Did Mr. Yutzy state to you the courses of his information respecting the point at the end of the first line of the Royal Charlotte?

Objected to.

A. His father had shown it to him; his father was dead at the time. The Yutzys had owned the land adjoining for a number of years and that had always been recognized as the corner of their land. The next tract which I surveyed was granted by the State of Maryland, called the Promised Land. It was granted to Thomas Johnson, on the sixth day of December, 1786. I began the location of said tract at a black oak stump standing between two anciently bounded white oak trees on the northeast slope of a hill, said trees and the stump being pointed out to me as the original beginning of the Promised Land by John Harned, a witness produced upon the ground on behalf of the State of Maryland.

Objection by defendant as to statement of John Harned.

I ran this first line north 40 perches; second, west 253 perches; third, south 400 perches to a planted stone at the end of said third line, it being also the beginning of a tract of land called Kindness. The remaining line of said tract called Promised Land was laid down upon the plots by protraction for illustration. Said tract is shown upon the plot by solid black lines to the end of the third line, and the remaining lines shown by broken lines and numbered by black figures from one to six, both inclusive; within said lines

is designated the Promised Land, and the beginning thereof is shown at black letter B upon the plot.

1703 Defendant objects to statement of witness that the stone was the beginning of a tract called Kindness.

(WITNESS:) The Promised Land is located upon the plot from the end of this third line, (which is also the beginning of Kindness,) from the point in the Fairfax Meridian, designated as Rock C upon the plot, which is by latitude 77,662 5/10 feet north of the Potomac Spring, and by departure 5963 1/10 feet east of the Potomac Spring. From Rock C I ran a traverse line as follows: First, north 89 degrees 21 minutes east 1015 feet; second south 49 degrees 17 minutes east 2254 8/10 feet; third south 52 degrees and one minute west 566 feet to planted rock at the end of the third line of Promised Land, it being also the beginning of the tract of land called Kindness, designated upon the plot at the black letter C. That is all in regard to Promised Land.

The next tract which I located was Kindness, the tract known as Kindness, which was patented by the State of Maryland to Baker Johnson on the 23rd day of October, 1773. I began the location of said tract at a planted stone proved by actual survey to stand at the end of the third line of a tract of land called the Promised Land.

Defendant objects to witness stating that it was found by actual survey to be at the end of the third line, instead of stating what he found simply.

(WITNESS:) The stone was by survey at the end of the third line of Promised Land. I ran from the end of the third line of Promised Land, first north 98 perches; second north 76 degrees west 160 perches. At the end of 143 perches and three links I crossed
1704 the Fairfax Meridian; third, south 447 perches. At the end of 211 perches this line crosses the tracks of the Baltimore & Ohio Railroad. At the end of 310 perches it crosses Snowy Creek. Fourth, south 29 degrees east 319 perches. At the end of 44 perches and 22 links this line crosses the Fairfax Meridian. The remaining lines of said tract called Kindness are laid down upon the plat by protraction for illustration. Said tract is shown upon the plot by black letters to the end of the fourth line thereof, and by broken black lines for the remaining distance, said lines being numbered from one to 10 both inclusive, with black figures, and the tract is designated Kindness within said lines. The beginning is shown at the black letter C. The beginning of Kindness as located upon the plot is described above at the end of the third line of Promised Land with reference to latitude and departure, its location in that respect.

The next tract which I located is shown as Thomas & Ann, and was patented to Thomas Johnson on the 6th day of December, 1786.

Q. By what State?

A. By the State of Maryland. I began the location of said tract at a stone marked O. R., standing between three white oak trees, very anciently bounded, which were pointed out to me by Daniel McRoby and Edward Jamison, witnesses produced upon the ground on be-

half of the State of Maryland as the original beginning of said tract called Thomas & Ann.

Objection as to statement of parties.

Q. You have stated that that stone marked O. R.—is it O. R. or R. O.?

A. The stone is marked R. O., not O. R., as stated. Beginning at the above stone, I ran first north 85 degrees west 120 perches;
1705 second, north 27 degrees west 85 perches; third, south 28 degrees west 601 perches. At the end of 120 perches I planted a stake on said third line as at the beginning of Military Lot No. 1240, shown upon the plot at the black letter L. At the end of 322 perches on said third line, I planted a stake as at the end of the first line of Military Lot No. 1240. At the end of 327 perches on said third line I planted a stake at the end of Military Lot 1237, shown upon the plot at black K. At the end of 531 perches on said third line I planted a stake at the end of the first line of Military Lot No. 1237 shown upon the plot by black letter T. Fourth, south 62 degrees west 169 perches. At the end of 37 perches and 22 links on said fourth line, we crossed the Fairfax Meridian. Fifth, south 12 degrees 30 minutes west 217 perches; sixth, south 77 degrees east 320 perches. At the end of 185 perches and 20 links on said sixth line, we crossed the Fairfax Meridian. The remaining lines of said tract called Thomas & Ann are laid down upon the plot by protraction for illustration. Said tract of land is shown upon the plat by solid black lines to the end of the sixth line thereof, and the remaining lines shown by broken lines, the lines thereof are numbered with black figures from one to ten, both inclusive, and within said lines said tract is designated Thomas & Ann and its beginning is shown upon the plot at the black letter D. The tract of land called Thomas & Ann is located upon the plat at the end of 190 perches and five links on the sixth line where it intersects the Fairfax Meridian. The stake set at this intersection is by latitude 78,220 5/10 feet north and its departure 5936 feet east from the Potomac Spring.

Q. Did the witnesses McRobey and Jamison give you the sources of their information respecting the beginning of the tract called Thomas & Ann?

1706 A. I have not got any direct information in regard to the testimony of Mr. Jamison, but Mr. Daniel McRobey stated that he was shown that point at the beginning of Thomas & Ann by David Summers, James Childs and Nelson Baker, all of whom were dead in 1898, at the time he showed the corner to me.

Defendant objects to statement made to witness by McRobey as evidence.

Q. What connection, if you know, had these people with the land, or with McRobey, and what connection did McRobey have with the land, if any?

A. I do not remember any statement as to his connection with the land.

Q. Did McRobey and Jamison, or the persons named to you by McRobey, live in the vicinity?

A. McRobey lived nearby, I think, to the best of my knowledge he resided close to the tract of land. He stated to me that he had known the location, this beginning and this tract of land, since 1859, known that corner. I want to add a statement there. Mr. McRobey knew these corners, or his interest and attention was called to these corners on account of a suit between the Baker- and Swans, which was about the year 1867. That is in partial answer to what I was asked before.

Q. Did he state who pointed out the beginning at that time?

A. The three men whom I have mentioned.

Q. Were they witnesses produced upon the ground?

A. Witnesses in that suit of Baker & Swann. The next tract I located was called Diadem and was patented by the State of Maryland to George Robinson & Thomas Haywood, on the third of December, in the year 1791. I began the location of said tract of land
at a planted stone in a meadow, the same being pointed out
1707 to me as the place where the two bounded wild cherry trees
stood, the original beginning of said tract called the Diadem, by John E. Otto and John F. Lewis, witnesses produced upon the ground on behalf of the State of Maryland.

Objection by defendant that place was pointed out by Otto and other witnesses.

(WITNESS:) I ran first north 60 degrees east 267 perches; second north ten degrees east 122 perches. This point is the beginning of Military Lot No. 1447, and shown upon the plots at the black letter M.

Defendant objects to statement of witness that this point is the beginning of said lot.

(WITNESS:) Third, north 61 degrees west 218 perches to a large rock; fourth, south 83 degrees west 237 perches. At the end of the 118 perches and 19 links of said fourth line, it crosses the Fairfax Meridian. Fifth, south 52 degrees west 300 perches; 6th, south 84 degrees west 186 perches. At the end of 68½ perches on said sixth line, it crosses the Potomac Meridian. Seventh, south 34 degrees west 254 perches; 8th, east 780 perches. At the end of 261 perches and 23 links of said 8th line, it recrosses the Potomac Meridian, and at the end of 623 perches said 8th line recrosses Fairfax Meridian. 9th, by a straight line to the beginning. Said tract is shown upon the plot by solid black lines to the end of the 8th line thereof, and the remaining line is shown by a broken black line, and the lines are numbered with black figures from one to nine, both inclusive, and the tract is designated the Diadem within said lines, the beginning being shown upon the plot at black letter E. The tract Diadem is
located upon the plot from a point in the Fairfax Meridian
1708 designated as Hub XQ upon the plot, which by latitude is
122510 feet north, and by departure 5952 6/10 feet east of the Potomac Spring. From Hub XQ I ran a traverse line north 71

degrees and 20 minutes east 2017 feet east, to rock planted at the beginning of Diadem.

Q. Did the witnesses who pointed out the beginning of Diadem, make any statement respecting their sources of information respecting that point there, and their acquaintance with the land?

Objected to.

A. In January 1898 John E. Otto, who stated that he was then over 70 years old, and had lived in the neighborhood of Cranesville for 51 years, went with me to the Rock which has been mentioned as standing at the beginning of the tract of land called Diadem, and stated to me that Joseph Lewis had shown him this point as where the double cherry tree, which is called for at the beginning of the tract of land called Diadem, had stood and said that they were on the west side of the drains and in range with a large cherry tree and a thorn tree, standing to the north. These latter trees were standing when I was there with Mr. Otto. The cherry tree is old and would not last long. I did not see it the other day when I was there. The rock ranged with these two trees, as stated by Mr. Otto. The latter trees are on the north side of the County road, while the beginning of Diadem is on the south side. Joseph Lewis also showed Mr. Otto this corner 50 years ago, that is, 50 years ago, this, statement being in 1898. Mr. Otto stated at that time, that Mr. Lewis was dead; and that he was present, that is, John E. Otto, at the planting of this rock, which had been set there some 20 years ago by Reuben Morris and Buckner Fairfax, the double cherry having disappeared, and this rock has been accepted universally as the beginning point of
1709 this tract of land since that time.

Objection by defendant as to statement of Lewis.

Q. Do you know who Reuben Morris and Buckner Fairfax was?

A. Reuben Morris was a surveyor to the best of my information; I think Mr. Fairfax was one of the members of the Fairfax family in Virginia.

Q. A descendant of Lord Fairfax?

A. So I understood. Mr. Otto also stated that Henry Lewis had cleared the land along the beginning of Diadem and had stated to him that when he did this work the double cherry tree, marking the beginning of Diadem, was down at that time. That is all the information I have as to the beginning all that came from John Otto.

Objection as to witness stating what statement others made.

Q. Is Mr. Otto living or dead?

A. He is dead. The next tract which I located was patented by the State of Maryland to Francis Deakins on the 25th day of February, 1786, under the name of Elder Spring. I began the location of said tract at an anciently bounded black gum tree and a rotten white oak stump shown me by Samuel Falkner, a witness produced upon the ground on behalf of the State of Maryland as the original beginning of Elder Spring.

Objection by defendant as to Falkner's statement.

(WITNESS:) I ran first north six degrees east 146 perches; second north 20 degrees west 80 perches; third north three degrees east 173 perches, corrected to 173½ perches, to a stake and stone pole shown me by Julius K. Monroe on the part of the State of West Virginia in this case, as the acknowledged end of the third line of the Elder Spring tract.

Objection by defendant as to statement of Julius K. Monroe.

1710 (WITNESS:) Fourth, west 100 perches to a stake and stone pole, pointed out to me by Solomon Cuppett, a witness produced on the ground on behalf of the State of Maryland, as the acknowledged end of the fourth line of the Elder Spring tract.

Objection by defendant.

(WITNESS:) At the end of 73 perches and 23 links on said fourth line, it crosses the Fairfax Meridian. Fifth, south 67 degrees west 60 perches. Sixth line, south 25 degrees west 80 perches; third, south 32 degrees east 40 perches; 8th, south 48 degrees east 98 perches; ninth, south 20 perches; 10th, south 38 degrees west 82 perches; 11th south 8 degrees west 30 perches; 12th, south 42 degrees east 40 perches; 13th, south 10 degrees west 147 perches; 15th, north 77 degrees east 80 perches. At the end of 38 perches and 20 links, at the end of said 15th line, we crossed the Fairfax Meridian. 16th, north 41 degrees east 90 perches; 17th, by a straight line to the beginning. The said tract is shown upon the plot by said solid black lines to the end of the 16th line, and the remaining line is shown by broken black lines. The lines are numbered with black figures from one to 17, both inclusive, and the tract is designated Elder Spring within said lines, the beginning being shown upon the plat at black F. The Elder Spring tract is located upon the plot from the end of the 4th line and from the hub at the Fairfax Meridian, the latitude of which is 155,707 feet north, and its departure 5944 8/10 feet east of the Potomac spring. Then by a traverse line from said Hub south 86 degrees and 47 minutes west 497 7/10 feet to the end of said 4th line of Elder Spring.

Q. Did the witness Falkner, at the beginning of said tract, make any statement respecting his sources of information.

Objected to.

1711 A. The corner, the beginning of Elder Spring, marked by a gum and White Oak Stump, was shown to Samuel Falkner by Samuel Sisler, sometime in 1860; when this corner was shown to Mr. Falkner the white oak snag was still standing, the tree was dead, but the stump standing. The gum tree is standing to-day, a good healthy tree.

Objection by defendant as to statement of witness as to tree being shown Falkner.

Q. That was Mr. Falkner's statement to you?

A. Mr. Falkner's statement to me on the ground.

Q. What if any interest or connection did Mr. Falkner have with this property?

A. He lived upon the Elder Spring and this was his beginning corner the beginning corner of his land.

Q. Take up another tract.

A. The next tract which I located was the tract known as Cherry Hill, patented to William Deakins, Jr., by the State of Maryland, on the 15th day of February, 1786. I began the location of said tract of land at an anciently bounded ash tree, standing on the east slope of a hill, said tree being pointed out to me by Taylor Friend, a witness produced on the ground on behalf of the State of Maryland, as the original beginning of said tract called Cherry Hill.

Defendant objects as to what was told witness.

(WITNESS:) I ran thence first south 80 degrees east 100 perches. At the end of 34 perches on said first line, I planted a stake at the beginning of Military Lot No. 2952, said stake being shown upon the plot at the black letter O. Second south 30 degrees east 60 perches; third, east 73 perches. At the end of 65 perches on said third line it crosses Buffalo Run. Fourth, north 68 perches. At the end of 13 perches and again at 16 perches at the end of
1712 24 perches on said fourth line, it crosses Buffalo Run. 5th, north 68 degrees west 176 perches; sixth, south 80 degrees west 100 perches; 7th, south four degrees west 28 perches; 9th, south, 46 degrees west 54 perches; tenth, west 120 perches. At the end of 26 perches and 16 links of said tenth line, it crosses the Fairfax Meridian; 11th, south 12 degrees west 86 perches; 12th south 67 degrees east 80 perches; 13, south 50 perches; 14, south 29 degrees east 64 perches; 15, north 71 degrees east 100 perches. At the end of 24 perches said 15th line recrosses the Fairfax Meridian; 16th, north 16 degrees east 134 perches; 17th, by a straight line to the beginning. Said tract is shown upon the plot by solid black lines to the end of the 14th line thereof, and the remaining line by a broken line. The lines are numbered with black figures from one to 12, both inclusive, and the tract is designated Cherry Hill within said lines, the beginning being shown upon the plot by black letter G. The beginning of Cherry Hill is located upon the plot from Hub X in Fairfax Meridian, the latitude of Hub X being 159902 feet north, and its departure 5943 8/10 east of the Potomac Spring. From Hub X I ran a traverse line as follows: First, north 89 degrees and 54 minutes east 1948 7/10 feet; second, north no degrees and six minutes west 880 3/10 feet; third, north 89 degrees and 54 minutes east 112 4/10 feet; fourth south no degrees and six minutes east 779 8/10 feet to the beginning of Cherry Hill. The point at Hub X is shown upon the plot with the black letters Hub X.

Q. Did the witness Friend make any statement respecting his source of his information concerning the beginning of Cherry Hill?

A. This is the same Taylor Friend who has examined as a witness Saturday.

Objection by defendant as to statement of Taylor Friend.

1713 (WITNESS:) He stated that the ash tree was shown to him by his father, C. W. Friend, about 30 or 35 years ago, as the beginning of the Cherry Hill tract. Mr. C. W. Friend was shown

the ash by Andrew Teats and that Andrew Teats was shown the tree by Jacob Friend. All these men were dead at the time Mr. Friend made the statement to me.

The next tract which I located is known as the Granary, which was patented by the State of Maryland to Charles Peale Polk and Raphael Peale by the State of Maryland, on the 10th day of January, 1788. I began the location of said tract of land at a planted stone pointed out to me by Isaac Meyers, a witness produced upon the ground on behalf of the State of Maryland, standing at the place where a bounded white oak tree originally stood; the original beginning of said tract called the Granary, this point near a spring draining at the head of a hollow. I ran thence south 30 degrees east 40 perches to a bounded white oak tree at the end of this first line; second, south 26 degrees west 43 perches; third, south 80 degrees 196 perches; fourth, north 94 perches; fifth, northeast 358 perches; The remaining lines of said tract were laid down upon the plot by protraction for illustration. This tract is shown upon the plot by solid black lines numbered from one to seven, both inclusive, and the tract is designated the Granary within said lines, and the beginning thereof is shown upon the plot at the black letter H. The beginning of Granary is located upon the plot from a Hub designated Hub A in black letters, which is in the Fairfax Meridian, the latitude of Hub A beginning 165215 5/10 feet north, and its departure 5942 7/10 feet east of the Potomac Spring. From Hub A, I ran the following traverse line. First, east 1486 feet; second south 71 degrees and 56 minutes east 1516 feet; third, north 87 degrees and 42 minutes east 1069 5/10 feet; fourth north 61 degrees and 24 minutes east 1255 feet; fifth, north 28 degrees and 36 min-
1714 utes west nine feet to planted rock, the beginning of Granary.

Q. Please state whether or not the witness Meyers made any statement to you showing the courses of knowledge of the location of the beginning of this tract?

Objected to by defendant as to any statement of courses of knowledge.

A. In February, 1898, Isaac Meyers, being present on the ground, showed me the stone marking the beginning of Granary. This stone was planted in the spot where David Kent and Lemuel Savage had shown Meyers the beginning of Granary. A bounded white oak had stood upon this spot, and as had been testified to them by John Shark, who had seen the tree. Meyers had known this tree for over 26 years.

Objected to.

Q. Did Meyers say whether or not the parties who had pointed it out to him were living or dead?

A. They were both dead.

Q. At the time you made the surveys?

A. That is Savage and Kent?

Q. Yes, at the time you made the surveys?

A. Yes sir. Mr. Meyers further stated he had owned part of Granary part of that tract of land.

Q. Did he say whether or not Savage and Kent had any interest in the property?

A. No, he did not say whether they had any interest in it.

Q. You have spoken of certain Military Lots, the beginning of No. 316, and running to No. 2952. Will you please state why you located those lots in connection with the several tracts of land where they appear on the plat; in other words, what connection is there between the tracts upon which the several lots you have located upon the plats, and the tracts?

1715 A. The object in locating these lots, or their most westerly portions, was to show that the so-called Military lots laid out by Francis Deakins in 1789 were not laid out along the western,—in any fixed western boundary, but consisted of numerous blocks of lots all along, and originating from certain lines of old land grants which we have mentioned, as in the case of the first, The Royal Charlotte.

Defendant objects to statement of witness as to the reasons for locating Military Lots given by him and the deductions which he has drawn, as improper for a witness to give.

Q. Please state whether or not Military Lot No. 316 calls for any one of the lines of the Royal Charlotte?

A. Military Lot No. 316, according to its original certificate, calls to begin at the end of 122 perches on the third line of a tract of land called The Royal Charlotte, and to run thence with said third line south 26 degrees west 202 perches; thence north 180 perches, which is the most westerly limit of that lot.

Q. Please state whether or not the several Military Lots which you have laid down upon the plat call for the particular tracts of land to which they lie contiguous?

Objected to by defendant, certificates being best evidence.

A. They do call for the older tracts.

Q. Were you instructed by counsel for the State of Maryland to locate the several Military Lots which appear upon your plat in the manner in which you have located them?

A. I was.

Q. And for the purpose of showing that they do not lay in——

A. That their western boundary was not a meridian; to show that they were laid off to no fixed line upon the west.

1716 Objected to. Statement of counsel not evidence.

Q. Please state whether or not you have located the several Military Lots which appear upon your plat in accordance with the original certificates for said lots?

Objected to, witness can only tell what he has done, without giving opinion as to its legal effect.

A. I have; I had certified copies.

Q. What method did you use in locating these lots, the ordinary method of surveyors?

Objected to.

A. Yes sir, the way it was done in the first place, I suppose, so far as we were able to do it.

Q. Please state whether or not the locating by you and survey of the several military lots which appear upon that plat was made by actual survey?

A. They were; I have already described how these lots were located, that is, giving the beginnings and the courses and distances. By direction of the Counsel of the State of Maryland, I located by actual survey the beginning and the first four lines of a tract of land known as the William Ashby 300 acre tract, granted by the Commonwealth of Virginia, to William Ashby, in conformity with a survey made on the 21st day of March, 1785, by virtue of preemption treasury warrant No. 8143, issued on the 16th day of November, 1781, to John Simpson, assignee of William Ashby, reciting that it lies in Monongahela County and the main branch of the Youghiogheny River. I began said survey at a rock in the water of the Youghiogheny River on the east side thereof, pointed out to me by Parker Ashby, a witness produced on the ground by the State of Maryland, as marking the place where a cherry tree had for-
1717 merly stood, it being the original beginning of the William Ashby 300 acre tract.

Objection as to statement.

I ran according to the original courses and distances and calls of the original tract, first, north 61 degrees west 109 perches; second, south 51 degrees west 112 perches; at the end of fifty perches on said second line we set a stake at the intersection of the Fairfax Meridian. Third, south 84 degrees west 54 perches; fourth, south 37 degrees west 160 perches. The remaining lines are laid down by protraction upon the plot for illustration. The beginning of said tract is shown upon the plot at the black letter P, and the lines are laid down by solid black lines being numbered in black figures from one to nine, both inclusive, and within said lines said tract is designated Ashby 300. The tract is located upon the plot from a stake standing at the end of fifty perches on the second line of said tract where it intersects the Fairfax Meridian. The latitude of said stake is 51024 6/10 feet north, and the departure 5969 2/10 feet east of the Potomac Spring.

Q. What is the name of the man who pointed it out to you?

A. Parker Ashby.

Q. Did Parker Ashby make any statement to you concerning how he became acquainted with that tract of land, if yea, what was it?

Objected to by defendant.

A. Parker Ashby had been shown the point where the stone now lies at the edge of the water as the point where the Cherry Tree had formerly stood, marking the beginning of the William Ashby 300 acre tract. This point was shown to Mr. Ashby by his grandfather, William Ashby, and by Christian Wilt, he has known the corner for about forty years.

Objection by defendant.

Mr. PRICE:

1718 Q. Is this Parker Ashby the same man who was examined as a witness here a few days ago?

A. I understand he is; I was not in the room, at the time. I saw him about town. It is the same man.

For PLAINTIFF:

Q. Do you know whether William Ashby, who pointed out this beginning point, was the assignor of Simpson, the patentee of the same tract?

A. No, I do not; I should suppose not, because there are several William Ashby's several generations of them. This man would probably have been an older man.

Q. What if any connection or interest did Parker Ashby have with this property, or any part or subdivision thereof?

A. He owns and resides on a portion of the Ashby 300 acre tract, did at the time he showed me the corner. I then, by direction of Counsel for State of Maryland, located the 26th and last line of a tract of land called the Hooker Tract, granted by the Commonwealth of Virginia to John Hooker, assignee of Robert Hooker, patented the 7th day of April, 1788, in pursuance of a survey made by virtue and in consideration of land office treasury warrant No. 21443, paid the 23rd day of December, 1783, said survey bearing date the 20th day of November, 1876. I began said survey at the beginning of said 26th line, at a bounded chestnut tree, near a fallen red oak, and pointed out to me by Dorsey L. Ashby and Jessie J. Ashby, Jr., witnesses produced on the ground on behalf of the State of Maryland, as the southeast corner of the Hooker tract, and ran the 26th line south 67 degrees and 15 minutes west 230 perches along a marked line; and then prolonged said line to the end of 270 perches to an anciently bounded white oak, red oak tree, and chestnut stump

1719 pointed out to me by Dorsey L. Ashby, as the beginning of Brannon Lands, which is a part of the Hooker tract.

Objection by defendant.

The remaining lines of said tract are shown upon the plot by black lines numbered from one to 26, both inclusive; and within said lines said tract is designated Hooker. The beginning of said tract is shown upon the plots at the black letter Q, and the beginning of the 26th line is shown at the black letter V.

Mr. PRICE:

Q. You laid down all the lines, except the last one, by protraction?

A. All, except the last one, by protraction. The Hooker tract is located upon the plot from the end of 1391 feet on the 18th line of said tract, the altitude of this point being 67,978 5/10 feet north of the Potomac Spring.

For PLAINTIFF:

Q. What did you do next?

A. I then, by direction of the counsel for State of Maryland, carefully resurveyed and laid down by actual survey the lines of the

Francis and William Deakins six thousand acre tract, granted to them by the State of Virginia on the 22nd day of September, 1789, and from the 35th to the 46th lines inclusive. I began said survey at a fallen bounded white oak at the third corner of Deamins 222 acre survey, granted by the State of Virginia, which said tree was pointed out to me by Henry Sisler and John Kenney, witnesses produced upon the ground on behalf of the State of Maryland, as the original white oak called for at the end of the course, south 20 degrees west 106 perches of said Deakins survey of 222 acres, and also a corner of the Deakins six thousand acre survey, it being the beginning of the 25th line of said tract.

1720 Defendant objects to foregoing statement.

(WITNESS:) And ran thence with the 35th line south five degrees west 138 perches, corrected to south four degrees west 138 perches to a fallen and decayed white oak tree; 36th line, south 81 degrees east 122 perches to a service and maple; 37th line, north nine degrees east 200 perches to a *s*ervice, chestnut and sassafras. This course was corrected to north 11 degrees east 191 perches to a stone pile pointed out to me by Henry Sisler and Deberry, witnesses produced upon the ground on behalf of the State of Maryland, as the corner. At the end of 37th line of the Deakins six thousand acre survey I should have stated that the service and chestnut were not found on the ground; those were the calls of the original. The 38th line, north 89 degrees and thirty minutes east 196 perches to a tract of land called Ashby's Cove, corrected to north 89 degrees and thirty minutes east 197 perches and 17 links to the third line of said tract called Ashby's Cove, patented by the State of Maryland, as hereinafter referred to; 39th line, north ten degrees and 30 minutes east 41 perches to the sixth line of a tract of land called Thomas & Ann, (and with it reversed the four following courses) corrected to north ten degrees and 30 minutes east 85½ perches to the sixth line of Thomas & Ann, patented by the State of Maryland as herebefore referred to. *Fortieth* line, north 76 degrees west 40 perches, corrected to north 76 degrees west 58 perches and seven links to the end of the fifth line of Thomas & Ann. 41st line, north 12 degrees east 217 perches; 42nd, north 82 degrees east 169 perches; 43rd, north 28 degrees east seventy perches; 44th, north 675 perches to Albert Gallatin's survey, and with it, 45th line west 390 perches to a tract of land patented by the State of Maryland, called Non Pariel; thence,

1721 46th line, south 114 perches to the beginning tree of said land called Non Pariel, and with the following lines of it reversed, 47th line, south 24 degrees east 371 perches; 48th line, south 80 degrees west 90 perches; 49th line, south 30 degrees west 36 perches; 50th, south 40 perches; 51st, south 45 degrees west 91 perches. This tract is shown upon the plot by solid black lines, numbered with black figures from 35 to 50 inclusive, and within said lines are the word Deakins 6000 A. Said tract is located upon the plot from the end of 438 perches and three links on its 45th line; at which point its altitude is 94,982 2/10 feet north of the Potomac Spring.

Q. You have spoken of the 45th line of this tract of land calling for the tract of land called Non Pariel. Have you located the Non Pariel tract by actual survey?

A. I have.

Q. Is that tract shown upon your plat?

A. Yes, it is shown.

Q. That is a Maryland tract, is it not?

A. Patented by the State of Maryland, yes.

Q. You have not up to this time described it?

A. I have not described it yet. By direction of counsel for the State of Maryland, I located by actual survey the beginning and the first four lines of a tract of land known as the William Deakins 130 acre tract on Nettle Ridge, according to the original courses and distances and calls contained in a patent therefor granted to William Deamins by the Commonwealth of Virginia on the 21st day of August, 1787, by virtue and in consideration of office treasury warrant No. 20,989, granted the first day of December, 1783, a tract or parcel of land containing 138 acres by survey bearing date the 5th day of December, 1786, lying and being within the County
1722 of Monongahela. I began said survey at an anciently bounded poplar tree standing on the northwest side of a branch of Buffalo Run on the north side of Nettle Ridge, said tree being pointed out to me by Mr. Thomas Savage, a witness produced upon the ground on behalf of the State of Maryland, as the original beginning of the William Deakins 138 acre tract.

Objected to by defendant.

And ran thence first south 45 degrees west 80 perches; second south 30 degrees east 120 perches to an anciently bounded red oak near a poplar stump, the original call being for a red oak, a white oak and poplar; third, south 60 degrees east 200 perches; fourth north 62 degrees east 80 perches. The remaining lines I laid down upon the plat by protraction for illustration. The beginning of said tract is shown upon the plot at the black letter E, and the lines are shown by solid black lines numbered from one to five, both inclusive, and within said lines said tract is designated Deakins 138 A. This tract is located from Hub A in the Fairfax Meridian, hereinbefore referred to, and from Hub A I ran a traverse line as follows: First east 1486 feet; second, south 71 degrees and 56 minutes east 1516 feet; third, north 87 degrees and 42 minutes east 1069 5/10 feet; fourth, north 61 degrees 24 minutes east 1255 feet; fifth, south 80 degrees and 39 minutes east 1133 5/10 feet; sixth south 54 degrees and 24 minutes east 405 feet to the poplar tree marking the beginning of the William Deakins 138 acre tract. The perpendicular distance to the east of Fairfax Meridian is 6495 8/10 feet. The beginning of this tract is by latitude 165,028 2/10 feet north, and by departure 12,438 5/10 feet east of the Potomac Spring, being over two miles to the east, and over one mile east of the Fairfax Meridian. By direction *for* the counsel for the State of
1723 Maryland, I carefully resurveyed and laid down by actual survey the lines of a tract of land called Ashby's Cove, surveyed for Samuel Chase on the 13th day of April, 1774, then lying

in Frederick County, in the State of Maryland, and patented to Thomas Hall of Harford County, on the 14th day of May, 1787. I began said survey at two very old cherry trees standing about three perches from the north side of Snowy Glade Creek, one of which trees I blocked and proved that it had been anciently bounded. These trees stand near the end of 307 perches on the third line of a tract of land called Kindness, patented by the State of Maryland to Baker Johnson, of Frederick County, on the third day of October, 1793. I was told the location of this tract by Mr. Samuel DeBerry, and Mr. William Ashby, both of whom have since died, and from the description of the deed, and from their instructions, I found this tree and blocking found one of the three axe marks still visible, although the wood was very much decayed. These marks were some five inches in the tree, and the block which we now have here and now produce and file, showing plainly on the exterior the three axe marks, we claim as the beginning tree of the tract of land called Ashby's Cov-e. For identification I mark said piece of wood A. C. 1774. I would like to add to that statement, from my own experience and knowledge of other bounded trees and corners, as a surveyor, this was to the best of my judgment, one of the anciently bounded trees. It compared with the other trees of similar age which I had seen on other surveys.

Defendant objects to such statement of witness.

Q. Did said tree stand at the proper place of the beginning of the tract called Ashby's Cove?

Objected to.

Or answer the calls of the original patent; by running the
1724 lines from this tree, were all the calls gratified?

Objected to.

A. Yes, sir, they were. I ran from this beginning tree, according to the original courses and calls, first north 286 perches; second, north 76 degrees west 120 perches, a stake marked No. 6; third, south ten degrees and 30 minutes west 272 perches. At the end of 201 perches, on this third line, Snowy Glade Creek is crossed. Fourth, by straight line to the beginning. This tract is shown upon the plots by a solid black line, numbered with black figures from one to four inclusive, and within said lines by the words Ashby's Cove, and the beginning of said tract is shown by the black letter W, being located upon the plot 53 links east of the end of 306 perches and 23 links on the third line of a tract of land called Kindness.

Q. Is there any way by which, from an inspection of block A. C. 1774 you could arrive at the age of the marks upon the tree, preserved on said block, taking into consideration not simply the block itself, but also the decayed portion of the tree?

A. Well, as I stated—the fact is I have made rather a specialty of cutting out and preserving old land marks, and I have in my possession at home, a block which was cut out of a cherry tree showing very plainly and distinctly the axe marks and the rings of the growth of the tree, which not only is proved to have been an original Deak-

ins corner of Military Lot number 1394, but we have the direct traditional testimony that that tree was bounded.

Objection by defendant as to other blocks and traditions.

(WITNESS:) And from that block I have measured the distance which the tree had grown, and from that and similar cases in my experiences, I feel confident in stating that that tree has been very anciently marked and is old enough to be the original corner.

1725 Q. What marks for each year's growth does a tree show?

A. One ring or circle.

Q. How much of this tree was decayed in comparison with the size of the block you have here?

A. I think there was, well, there was about two-thirds of the tree is gone, that is, from where the mark was.

Q. You mean the block of wood would have been three times as thick as it is now?

A. Not, two-thirds thicker—it has lost two-fifths of its thickness by decay.

Q. Would, under the microscope, the concentric rings be discovered.

A. Taken in the solid woods.

Q. In this block could that be done?

A. Yes.

Q. Have you ever examined this block under the microscope?

A. No, I have not. By direction of the counsel for the State of Maryland, I then carefully resurveyed and laid down by actual survey the first ten lines of a tract of land called Non Pariel, the remaining lines thereof by protraction, which said tract, on the 5th day of September, A. D. 1774, was surveyed for Jonathan Boucher, then lying in Frederick County, and contained 2,482 acres, by virtue of 1862 acres, part of a common warrant for two thousand acres, dated the 26th day of March, 1774, and fifty acres, part of a special warrant for four thousand acres, dated the 25th day of the month and year last aforesaid, both granted out of the Proprietary's Land Office, according to the conditions of the plantation then in force, and patented by the State of Maryland to James Wingell, of Baltimore Town, on the 24th day of December, 1786. I began the location of said tract of land near some hickory trees standing on the

1726 west side of a hill near an old road leading from Dunkard's Glades to Dunkard Bottom, about 40 perches from a glade at a stake standing at the end of the 46th line of a tract of land patented to William Deakins, and ran first north 114 perches; second, north 60 perches; east 120 perches; third, north 45 degrees east 24 perches; 4th line, north 12 degrees east 110 perches; fifth, north 148 perches, sixth, 148 perches; north, 60 degrees east 114 perches. At the end of eight perches and one link, on this sixth line, it crosses the center of the old Burchinal Road, and crosses the Potomac Meridian at the end of 100315 feet north of the Potomac Spring. Seventh line, north 61 perches; 8th, north 30 degrees west 50 perches, 9th, north 30 degrees east 65 perches; tenth, north twenty degrees west 241 perches. The remaining lines of said tract are laid down upon the plot by protraction for illustration. This tract is designated upon

the plot by the words Non Pariel, and its lines are shown by black lines numbered with black figures from one to 36 inclusive, and it is located upon the plot from the intersection of the Potomac Meridian, as stated, 100315 feet north of the Potomac Spring, where its sixth line crosses the Potomac Meridian. That finishes the tract.

Adjourned at this point to meet at 8 o'clock P. M.

Met pursuant to adjournment.

Q. Do you know where Mr. Monroe, the surveyor on the part of the State of West Virginia, located a line in this case in 1894?

A. I know a number of points where he run.

Q. Did you locate those points by actual survey?

A. I did.

Q. Having located those points by actual survey, did you or not connect them in any way upon the plat?

A. Yes sir, having located the points with reference to
1727 the Meridian Line run from the Potomac Spring, I joined the points thus located by straight lines in red upon the plot.

Q. How is that line shown upon the plats?

A. It is shown by red lines, running from the Fairfax Stone to the Mason & Dixon Line, and the words Monroe Line, in red letters, marking the course of the line S.

Q. Who showed you the points which you located by actual survey on the ground in that line?

A. Nearly all of them were shown me by Mr. Julius K. Monroe, as the points to which he ran, and the stakes were still standing in nearly all cases.

Q. Please state whether or not you determined by actual survey if the line ran by Mr. Monroe was a straight line between the Fairfax Stone and the Mason & Dixon Line?

A. My work proved that it was not a straight line between the Fairfax stone and the Mason & Dixon Line.

Q. Will you please now, give in detail the work you did in connection with what you have termed on the plat the Monroe Line, beginning at the Fairfax Stone—starting at the Fairfax Stone—the Fairfax Meridian, and the line run by Mr. Monroe, coinciding at the starting point?

A. At the point designated upon the plot as station Zero on the Fairfax Meridian, the line, as run by Mr. Monroe was 63 8/10 feet east of the Fairfax Meridian. On Arnold's Ridge at the end of six thousand feet on the Fairfax Meridian, the line, as run by Mr. Monroe, was 83 1/0 feet to the east of said Meridian. Upon the Back Bone Mountain, 15092 6/10 feet on said Meridian, the line as run by Mr. Monroe was 202 8/10 feet to the east of the Fairfax Meridian; at Stahl's Hill, which is 186 feet north of the Fairfax
1728 Stone, the stake located in Mr. Monroe's line was 664 3/10 feet east of the Fairfax Meridian. At Snaggy Mountain, 105,600 feet on said Fairfax Meridian, the line as run by Mr. Monroe was 1204 7/10 feet east of the Fairfax Meridian. At Elsey's, the

distance north of the Fairfax Stone being 120483 feet, the stake in Mr. Monroe's line was 1294 3/10 feet to the east of the Fairfax Meridian. Out there at Cranesvile, 24½ miles, or 129360 feet north of the Fairfax Stone, the stake as set by Mr. Monroe was 1327 8/10 feet east of the Fairfax Meridian. At Fike's Hill, 136,801 5/10 feet the stake as set by Mr. Monroe was 1356 3/10 feet east of the Fairfax Meridian. The thirty-first mile stake, standing 163680 feet north of the Fairfax Stone, was 1419 feet east of the Fairfax Meridian. The stake as set by Mr. Monroe 31½ miles north, or 172753 3/10 feet north of Fairfax Stone was 1436 feet east of Fairfax Meridian. This latitude in relation to the Potomac Spring being north 183070 4/10 feet, and its departure east from the Potomac Spring being 7,400 8/10 feet. The points here mentioned are marked upon the plot by red circles and red letters in nearly all cases. These measurements have been made, the Fairfax Meridian being taken as the base. If the points as located above were in a straight line, the several perpendicular distances from the Meridian would be in proportion to their latitude north from the Fairfax Stone. This was found not to be the case. Therefore the points were not in a straight line, because, if they were in a straight line, they would be a series of similar triangles with the Fairfax Meridian as a base. And further we found from our work that the magnetic declination at the Fairfax Stone was, in the fall of 1897, three degrees and five minutes and 12 seconds west, while at the Mason and Dixon Line it was three degrees and 47 minutes and 30 seconds west, or a difference of 42 minutes and 18 seconds.

1729 The magnetic declination is increasing at the rate of three minutes each year; therefore the declination at Fairfax Stone in 1894, the date of the survey made by the State of West Virginia, would have been, at that time, two degrees 56 minutes and 12 seconds. Therefore, by running with an allowance of three degrees and 40 minutes from the Fairfax Stone, as was done on the part of the State of West Virginia, the angle with the true Meridian of the Fairfax Stone would have been at that time 43 minutes and 48 seconds. At Snaggy Mountain, the line as run on the part of the State of West Virginia, was still running with an allowance of three degrees and 40 minutes, while the true declination of that point in 1893 was three degrees and 28 minutes and 12 seconds, or a difference of 11 minutes and 48 seconds, and up to this point the line had diverged 1204 7/10 feet. At the Mason and Dixon Line, still running with an allowance of three degrees and 40 minutes, the divergence from the true north was 1462 1/10 feet; in 1894 the declination was, at this point three degrees 38 minutes and 30 seconds, or a difference of one degree and thirty minutes. It will therefore be seen that the divergence at Fairfax Stone was 43 minutes and 48 seconds; at Snaggy Mountain, 20 miles further north, eleven minutes and 48 seconds, and at Mason and Dixon Line, 36 6/10 miles from the beginning, one degree and 30 seconds, or nearly parallel with the Meridian, thus proving that the angle of divergence was constantly changing as it proceeded north, and that the line therefore, is not a straight line, and this

is also the same proposition we had before, that the angles of similar triangles are equal. Here the triangles are not equal, therefore the line is not a straight line, the angles changing in every case.

Q. Did you locate, by actual survey, any point or points in
1730 what is termed the old Deakins line; if so, please state what points you located and how they are designated upon the plats?

A. The first point which I located in what is termed the old line, was a white oak tree, pointed out to me by Lloyd Dawson, a witness produced on the ground on behalf of the State of Maryland, as a point in the old line. This tree was blocked and the marks in concentric rings were found to be not so much over forty years. This point is by latitude 35697 north, and by departure 6121 1/10 feet east of the Potomac Spring, and the perpendicular distance from the Fairfax Meridian is 148 3/10 feet east. This point is designated on the plot by the black letters W. C.

Defendant objects to statement that this tree was pointed out by Lloyd Dawson as in the old line.

(Witness:) The second point located was a thorn stump, pointed out to me by Francis Martin, a witness produced on the ground on behalf of the State of Maryland, as a point in the old line.

Objection by defendant.

This stump is indicated on the map by the black letters W. D. and its latitude is 381514 4/10 feet north, and its departure 6137 9/10 feet east from the Potomac Spring, and the perpendicular distance is 135 6/10 feet east of the Fairfax Meridian.

Q. Are Lloyd Dawson and Francis Martin, the witnesses to whom you have referred, living or dead?

A. They are both living, so far as I know, or were, a short time ago.

Q. The next?

A. Fence pointed out to me by Peter F. Nine, a witness produced on the ground on behalf of the State of Maryland, as a point
1731 in the old line. This point, the fence, is shown upon the plot at the black letters W. E.

Objected to by defendant.

(Witness:) And said point is by latitude 42276 feet north, and by departure 6190 2/10 feet east of the Potomac Spring, the perpendicular distance east of the Fairfax Meridian being 219 feet. Fourth, a whiteoak tree, pointed out to me by Julius K. Monroe, standing on Stahl's Hill, and shown upon the plot by the black letters W. F. The latitude of this point is 44420 feet north, and its departure 6230 5/10 feet east of the Potomac Spring, the perpendicular distance east of the Fairfax Meridian being 259 7/10 feet.

Defendant objects to the statement of the distance pointed out by Mr. Monroe.

(WITNESS:) Fifth, the fence pointed out to me by J. W. Jones, a witness produced on the ground on behalf of the State of Maryland, as being a point in the old line, and shown on the plots by the black letter G. This point is by latitude 77686 8/10 feet north, and by departure 7941 4/10 feet east of the Potomac Spring, and the perpendicular distance east of the Fairfax Meridian is 1128 and three tenth feet.

Defendant objects to the evidence of Jones having pointed this out.

(WITNESS:) Sixth, a cherry tree pointed out to me by Samuel Teats, a witness produced upon the ground by the State of Maryland, as being a point in the old line——

Objection by defendant.

(WITNESS:) —and shown upon the plot in black letters W.Y. The perpendicular distance is 1547 feet east of the Fairfax Meridian, and the latitude. Seventh, a point within the lines of the Diadem, and near the fourth line of said tract, where a red oak tree formerly had stood, was pointed out to me by Ethbell Falkenstein, a witness produced upon the ground on behalf of the State of Maryland, as a point in the old line.

1732

Objected to by defendant.

(WITNESS:) This point is shown upon the plot at the black letters W. K. and its latitude is 128896 feet north, and its departure 8446 8/10 feet east of the Potomac Spring. The perpendicular distance east of the Fairfax Meridian being 2495 6/10 feet. Eighth, the remains of an old fence pointed out to me by Taylor Friend, a witness produced upon the ground on behalf of the State of Maryland, as a point in the old line.

Defendant objects.

(WITNESS:) And being shown upon the plots at black letters W. S. This point is by latitude 160287 5/10 feet north and by departure 8920 6/10 feet east of the Potomac Spring, the perpendicular distance east of the Fairfax Meridian being 2976 feet. 9th, a fence pointed out to me by Isaac Meyers, a witness produced on the ground on behalf of the State of Maryland, as being in the old line.

Defendant objects.

(WITNESS:) And is shown upon the plots by the black letters W. L. The point thus located is 164716 8/10 feet north, and its departure 8913 8/10 feet east of the Potomac Spring, the perpendicular distance is 2971 1/10 feet east of the Fairfax Stone. 10th, a fence pointed out to me by Samuel M. Fike, a witness produced on the ground of the State of Maryland, as a point in the old line——

Defendant objects.

(WITNESS:) —and shown upon the plots by the black letters W. M. The latitude of this point being 172249 7/10 feet north, and its perpendicular distance 2957 5/10 feet east of the

1733

Fairfax Meridian and its departure. The 11th point in the Mason & Dixon Line, was shown me as a point in the old line by Abram J. Thomas.

Objection by defendant.

(WITNESS:) This point is designated on the plot by the black letters W. Z. and the latitude being 183079 7/10 feet north of the Potomac Spring, and the departure 8910 9/10 feet east of the Potomac Spring, the perpendicular distance being 2970 6/10 feet east of the Fairfax Meridian. In addition to the points that I have here mentioned, I was shown a spring in the town of Cranesville, pointed out to me by John P. Lewis, a witness produced on the ground on behalf of the State of Maryland, and also by Thomas Browning, a witness produced in a like cause, and according to the testimony of said witnesses said Deakins line ran across the water of said spring.

Defendant objects to this witness interpreting the evidence of other witnesses.

(WITNESS:) The latitude of this spring is 122230 7/10 feet north, and the departure is 4267 7/10 feet east of the Potomac Spring, the perpendicular distance at the same time being 1658 feet west of the Fairfax Meridian, said spring is designated on the plot with the word and black letters spring, and the black letters W. J.

Q. All the testimony you have so far given has been predicated upon the beginning points located on the North Branch of the Potomac has it not?

A. Yes, it has.

1734 Q. Have you ever been up the South Branch of the Potomac?

A. I have.

Q. Have you ever been up both forks of the South Branch of the Potomac, or if not, which fork have you been up?

A. Well, I have been at High Town, which I understand is the head of the North Fork of the South Branch of the Potomac.

Defendant objects to witness's understanding.

Q. Does or not the north fork of the South Branch of the Potomac extend further west than the Potomac Spring?

A. Yes it does.

Q. About how far, Mr. Brown, without making an actual survey, from your knowledge of the country, would you say it was extended?

A. My knowledge is derived from this; in the summer of 1900 I was employed by the United States Coast Survey, and took observations at various points in the neighborhood at the head of the north fork of the South Branch, and I know about 15 miles west, that is only an estimate.

Q. That is a proximate distance; now, then, will you please state what if anything you know of the latitude of the head spring of the north fork of the South Branch as compared with Potomac Spring?

A. I know that the mountain ranges south, proceeding to the southwest increase in elevation, and that point is a number of miles, I should say thirty miles at least, southwest, or southwestwardly of

the head waters of the North Branch of the Potomac, and I also know from publications of the United States Government, the results of their work and observations that on their plats the head waters of the north fork of the South Branch would be in
1735 excess of 3100 feet above tide.

Defendant objects to statement of witness as to what Geological Survey shows.

Q. That would then be a higher latitude than the Potomac Spring?

A. I believe that it would, because the Potomac Spring is some 31 hundred feet, but the points that I have indicated are not at the north fork of the South Branch of the Potomac.

Q. What is your belief with reference to the latitude of the north fork of the South Branch of the Potomac as compared with the latitude of Potomac Spring?

A. That the latitude is very nearly the same in the two cases.

That is all.

Adjourned to meet at 9:30 A. M. Tuesday, July 22, 1902.

Met pursuant to adjournment.

Q. Mr. Brown, did you determine the magnetic declination at points other than those to which you have testified; if so, please state what points you determined the declination at, and also give the same?

A. In addition to the declination which I have given, I observed the declination with my transit upon Robinson's Hill, a point in the Potomac Meridian, on November 24, 1897, at 11:30 A. M., and found that the needle of the transit read on meridian north three degrees and forty-seven minutes east; I also determined the declination by the transit upon Cuppett's Hill, in a point in the Potomac Meridian, and found that the needle read upon November 18, 1897, at 1:15 P. M. north three degrees and 47 minutes east. On February 7, 1898, at 1:30 P. M., at a point 274 feet north of the Mason & Dixon Line, the magnetic reading of the needle was north three degrees and 47½ minutes east. I would like to make a state-
1736 ment *that* in reference to the declination at Fairfax Stone, and at the Mason & Dixon Line, in connection with the magnetic work done by Dr. Bauer; for the sake of convenience the actual point of observation at Fairfax Stone was 465 feet north of the stone, and at the Mason & Dixon Line for the same reason, on account of the convenience of the ground, the point of observation was 274 feet north of the Mason & Dixon Line. These points were practically at the Fairfax Stone and at the Mason & Dixon Line.

Q. In your testimony you have stated that you located by actual survey the westernmost points in the lines of certain Military Lots laid out by Francis Deakins, in 1787, and that you also located points shown you as in the supposed old line. What was the relation of these points to each other, and to the line run by Mr. Monroe on behalf of the State of West Virginia in 1894, and what did your work prove?

Objected to. Witness cannot say what his work proved.

(WITNESS:) My work proved that none of the points referred to were in the same Meridian line, as by actual measurements, their perpendicular distances from the Fairfax Meridian were all different, and they were found to be either east or west of the Fairfax Meridian, and not in it. They are not in a straight line, because if they were their perpendicular distances to the Fairfax Meridian would conform and prove parts of the similar triangles and be proportional to the segments of their bases, measured upon the Fairfax Meridian, and they would form similar triangles with a common angle at the Fairfax Stone. My work proved that the perpendiculars were not proportioned and that there was no common angle at Fairfax Stone. I found none of the points above referred to corresponding with points as located in the line as run by the State of
1737 West Virginia in 1894.

That is all.

Mr. PRICE—Cross-examination:

Q. Mr. Brown, where do you live, where is your place of residence?

A. District No. 8, Garrett County.

Q. Please locate with reference to some natural objects?

A. I live on the Potomac River, about 12 miles south of Oakland, very nearly south.

Q. How far from the Fairfax Stone?

A. It is about eight miles.

Q. By the River, or direct?

A. Well, by a direct line.

Q. How long have you lived there?

A. From—nearly 21 years.

Q. When was the West Virginia Central and Pittsburg Railroad built up the North Branch of the Potomac River past your place?

A. It was—well, as near as I remember, in 1894, 1893—'83 or '84, I mean.

Q. What is the nearest point of that Railroad to the Fairfax Stone, the nearest station?

A. Well, Fairfax Station.

Q. How close is that to the Fairfax Stone?

A. It is between three quarters of a mile and a mile.

Q. Is that Fairfax Station on the North Branch of the Potomac River or any branch of it?

A. The Station is near the summit of the grade.

Q. Is it right on the dividing ridge betwen the waters of the Potomac and the waters flowing westward?

A. Not exactly.

1738 Q. On the dividing ridge?

A. Well, just east of the summit.

Q. East of the summit; how far is the town of Thomas from Fairfax Stone?

A. I think about six miles.

Q. In which direction?

A. In a southerly direction.

Q. It is a town on the West Virginia Central and Pittsburg Railroad?

A. Yes sir.

Q. Do you know about the population of that town?

A. It is less than a thousand, about a thousand, I don't know, I just suppose that is the population.

Q. That began to be built up after the Railroad reached there in 1884 or '3?

A. It was later than that—yes sir, it was that time.

Q. Now, all along the West Virginia Central & Pittsburg Railway from Piedmont to Thomas and beyond, there are villages, settlements, improvements, a good many people living, are there not?

A. Yes sir.

Q. All that territory is under the jurisdiction of the State of West Virginia, is it not, south of the River?

A. It has been, yes.

Q. When was your first connection with the survey in this case of Maryland against West Virginia?

A. In 1897.

Q. At what time in the year?

A. We met in Oakland on August 2, 1897, made up our party and went out to the neighborhood of Fairfax Stone.

1739 Q. Had Dr. Bauer been engaged to take part in the work prior to your meeting here on the second of August?

A. Well, he had not been engaged prior to my connection with the work, that is—well, about the same time.

Q. Who engaged him?

A. It was through Attorney General Calbaugh, he having charge of the case.

Q. Did Dr. Bauer come here on the second of August and go out with the rest of the Company?

A. My recollection is that he was working in Garrett County at the time, doing work for the Maryland Geological Survey, magnetic work, and he was in Oakland at about that time.

Q. Well, did he begin the work on this line at the same time you began?

A. For all practical purposes he did.

Q. Did he in point of fact or not?

A. Yes sir, that is, as soon as we located there he came out.

Q. Did he come first, or you?

A. I was the first one on the ground.

Q. Now, when Dr. Bauer came upon the ground, who directed him what to do?

A. The attorney for the State of Maryland.

Q. Who was that?

A. Mr. Sincell, represented the Attorney General.

Q. Mr. E. H. Sincell of Oakland, Maryland?

A. Yes sir.

Q. What did he direct Dr. Bauer to do?

A. He was, Dr. Bauer was to make magnetic—well, I should say that first he was to retrace the magnetic meridian from the
1740 Fairfax Stone to the Mason & Dixon Line, and he was also to run a meridian line from a spring just southeast of Back Bone Mountain, which in our surveys we have termed and designated the Potomac Spring, a Meridian Line from that spring to the Mason & Dixon Line, to make careful and accurate magnetic determinations of the declination.

Q. Was Dr. Bauer directed by you when he first began the work to run the Meridian Line from what you call the Potomac Spring?

A. Dr. Bauer was virtually not in charge of the survey, I was in charge of the survey, for the State of Maryland; he acted as astronomer to make the astronomical and magnetic observations, under the direction of the Attorney General and myself; I determined the point from which he was to run the westernmost meridian.

Q. When did you determine that, before you had done any work, or after you had been at it awhile?

A. After we had been at it a short time.

Q. Dr. Bauer's first work then was what?

A. The first work was to make observations, determining provisional and magnetic meridians from the Fairfax Stone, as I have mentioned previously in my work.

Q. Did he locate the Meridian from the Fairfax Stone through to the neighborhood of the Pennsylvania Line before you did any work on the line from what you call the Potomac Spring?

A. No, the work on the two lines was carried on simultaneously. The Meridian of the Fairfax Stone was first determined from the initial point upon the Back Bone Mountain, and prolonged northward to Lauer Hill. Then the observations were made on the summit of the Back Bone Mountain north of Potomac Spring, and the Meridian line from that point prolonged northward to Foley's Moun-
tain. Then the Station on the Potomac Meridian on Foley's
1741 Mountain occupied and that Meridian prolonged. Then observations were made on the Fairfax Meridian, and the two lines carried along simultaneously to the Mason & Dixon Line.

Q. The first point then determined, the first Meridian point then determined by Dr. Bauer was on the Back Bone Mountain, on the Fairfax Meridian, as you call it?

A. It was, yes sir.

Q. Now, what was the first work you did?

A. The first work which I did was to run north from the Fairfax Meridian to the point where the Meridian from the Fairfax Stone crossed the North Branch of the Potomac River. I then ran from that station up the right bank of the River to a point where the River forked, which was designated and known as station 31. From that point I continued up the right bank of the stream on the left, to the Fairfax Stone and to springs near it, to that point; I then returned to the fork of the River at Station 31, and ran up the right bank of the stream to a point which is marked as station 97, and by a stone with the work Potomac 1897 upon it, this point being near the summit of the Back Bone Mountain.

Q. Then your first work was to run the north line from the Fairfax Stone till you crossed the River, then followed the River up to its forks and station; you surveyed the two forks?

A. Surveyed the two forks.

Q. In surveying the two branches, you stated you went up the right hand bank, which do you call the right hand bank?

A. The right hand bank is the one starting from the source of the stream, which is on the right going down the stream.

Q. Right hand, going down?

A. Right hand, going down?

1742 A. Right hand going down.

Q. Not the right hand going up?

A. I did not mean to say the right hand bank; I should say the right bank, not the right hand bank.

Q. By the right bank you mean the bank to your right hand as you go down stream?

A. Yes sir.

Q. That would be the south side of the River, where the Meridian crosses, would it?

A. Yes sir.

Q. It would be on the inside of the curve, wouldn't it, running from that point around to Fairfax Stone?

A. Well, yes.

Q. On the other branch it would be on the outside of the curve, wouldn't it?

A. It would.

Q. Was there any difficulty in measuring the stream leading to the Fairfax Stone, in the middle of the stream at that time, instead of the right bank, as you call it?

A. I did not wish to measure it in the middle of the stream. You would have gotten wet.

A. I asked you if there was any difficulty in measuring it in the middle of the stream?

A. You would get your feet wet.

A. It could be done?

A. It could be done, yes.

Q. You didn't do it?

A. I did not want to do it.

Q. Why did you not want to do it?

1743 A. Because the State of Maryland claims to the southeast bank of the stream, the furthermost bank to the Mason & Dixon Line. I wanted to locate the claim in relation to the North Branch upon the southern bank.

Q. Because the State of Maryland claims to that bank, that is the reason?

A. They do claim on the north branch to the southern bank.

Q. Well, the State of Maryland don't claim anything on that part of the River running from the forks at 31 to Fairfax Stone?

Objection by Plaintiff—witness has no authority to state what the State of Maryland claims.

A. The State of Maryland claims to the north fork of the southern branch, the head waters of the north branch, which I know lies to the west of that point; therefore I know they do claim that portion within that curve.

Q. Then you were mistaken when you said she claimed to the south side of the North Branch?

A. Claims the whole thing.

Q. She claims everything?

A. She claims everything.

Q. Well, now, Mr. Brown, were you locating claims of the State of Maryland, or were you attempting to run the stream of the North Branch at the time you made that survey?

A. When I made that survey, I was instructed to run down the further or southern bank of the North Branch of the Potomac River.

Q. You said while ago that you did it because you did not want to run the other branch and that you did not want to do it because the State of Maryland wanted to the south side?

A. The instruction was to run to the further or southern
1744 bank, the right hand bank of that stream.

Q. Well, whatever the motive, that side of the stream is shorter, is it not, than if you had run on what is called the left side of the stream, the left bank of the stream?

A. From Station 31 the curve would make that somewhat shorter.

Q. And somewhat shorter than if it were run in the middle of the stream?

A. It would, yes.

Q. Now, was that stream afterwards measured in the middle of the stream by anybody?

A. It was, yes.

Q. Under direction of Mr. Monroe, representing the State of West Virginia?

A. Yes. Some of our men assisted him.

Q. Do you know the result of that measurement?

A. I do.

Q. Have you got it?

A. In one of my books, yes sir.

Q. Can you find it and give it to us?

Objection by plaintiff.

A. The actual line as given to me by Mr. Monroe, from his return, was, from the forks of Station 31 to Fairfax Stone 6730 feet.

Q. Who made that measurement, did the actual work of measuring?

A. Why I don't know, for certain who did that; I was not present; some of our men were with them.

Q. Some of the men you had employed on your survey?

A. Yes sir.

Q. These measurements were made whilst you were engaged in surveying?

1745 A. They were not made on behalf of the State of Maryland, yes sir, at the same time.

Q. And the work was done by the men you had working for you, was it not?

A. I remember two of the men were detailed, one was James Burrell we called him, and the other was Richard T. Browning. Those two I remember; whether there were any others, I do not remember: I do not know who carried the chain.

Q. Mr. Richard T. Browning was the man who carried the chain for you?

A. Yes sir, but whether he carried the chain for them, that I do not know.

Q. Now, what was the actual line on what you call the right bank from Station 31 to the Fairfax Stone?

A. The distance was 6730 feet.

Q. On the right bank?

A. The same distance as measured by me was 6418 8/10 feet to the Fairfax Stone.

Q. Now, what was the distance of the branch running to what you call the Potomac Spring from Station 31, according to your measurements?

A. It was 6477 7/10 feet.

Q. Was that stream measured in the center, or any other way than the way you measured it—did Mr. Monroe have it measured?

A. Yes sir, I understand that he did.

Q. In the same way? Was it your understanding that it was measured in the same way that he had the stream run to the Fairfax Stone?

1746 A. I was not present when it was measured.

Q. What was the result of the measurements of that stream?

Plaintiff objects.

A. As reported to me, it was 6414 feet.

Q. Who did that measuring for Mr. Monroe, some of your men?

Plaintiff objects.

Q. The same party who was on the other.

Q. This measurement which was done at the request of Mr. Monroe, on these two branches, was done with the same steel chain that was used in the measurements made by you?

Plaintiff objects.

A. It was not made—it was a steel tape which Mr. Monroe had.

Q. Did you run any other branches of the Potomac than those you have mentioned in your examination in chief, the branch leading to the Fairfax Stone, and that leading to what you call the Potomac Stone and Laurel Run, did you run any other of the branches except those three?

A. Only the small branches near the head, in the neighborhood of the Potomac Spring, near the Back Bone Mountain, that is, I ran the westerly branch of the north fork of the stream.

Q. Are there any other branches between Station 31 and the

Potomac Stone on the south of that branch that are not laid down on your map?

A. Yes sir, there is; there is one on the southern fork.

Q. That is, on the fork leading to Fairfax?

A. To Fairfax.

Q. Where does it branch off, how far from Station 31 going up the stream?

A. I can get the notes; I can give you the Station where it
1747 branches; I am not quite certain as to the stream to which you refer, but from my notes I believe it is the one which is at the end of the 56th course.

Q. How far, then, would that be about, from Station 31?

A. Three quarters of a mile.

Q. Did you survey any branch of the fork leading to the Fairfax Stone?

A. No, we did not.

Q. I notice on your map, a stream flowing into the Potomac River some distance east from the Fairfax Stone, designated on your map as South Prong; did you survey that prong?

A. No, I didn't survey that prong; that was laid down from a survey made on the part of West Virginia.

Q. Was that survey made on the part of West Virginia, after or before you did your work on the other branches of the River?

A. It was after.

Q. How long after?

A. Well, nearly a year, about a year.

Q. It was after you had concluded your survey, was it not?

A. No, not after we had concluded.

Q. Did you do any surveying after that?

A. Yes sir.

Q. You didn't do anything in the neighborhood of the head waters of the North Branch of the Potomac River after that?

A. Yes, we did; we took our checks on the reference lines and I took some of the elevations at different points; we also ran the lower portion of the River, and portions of Laurel Run, after that.

Q. I notice that you have indicated on the map the Back Bone Mountain. Did you survey the top of the mountain any-
1748 where except from Glade Run to the neighborhood of Potomac Spring?

A. The point on the Back Bone Mountain was determined where the Fairfax Meridian crosses.

Q. Those were the only points that you determined?

A. We surveyed the crest of the Mountain from Back Bone to the broken lines represented on the map.

Q. The only actual survey of the crest of the Mountain was that running southwest from the Potomac Spring?

A. On the location of the Fairfax Meridian, we determined that by survey.

Q. That is just a point; you didn't run along the top of the Mountain?

A. Not along the crest of the Mountain, no.

Q. You did not show the connection between the Fairfax Ridge

on which the Fairfax Stone is planted, and Back Bone Mountain, on your map, did you?

A. No.

Q. There is a connection, is there not, of this Fairfax Ridge, is a part of the Allegany Mountains, is it not?

A. It is a spur of the Mountain.

Q. Which direction does it run, as compared with the direction of the Back Bone Mountain?

A. Well, in the neighborhood of Fairfax Stone, it runs approximately in the direction of right angles.

Q. You never traced it out to determine the general direction of it westward from Fairfax?

A. Not by survey.

Q. Well, what would be the general direction westward from Fairfax Stone, according to your observations, and your
1749 knowledge of that section?

A. In the neighborhood of Fairfax Stone is is southeasterly.

Q. Well, does it continue that way?

A. No, it does not.

Q. What does it afterwards?

A. It is very irregular, indeed.

Q. You found no monument or marked trees at or in the neighborhood of what you call Potomac Spring, did you, when you went there?

A. Not when we first went there.

Q. There was nothing to indicate that that had ever been marked or established as a corner, or point in the State boundary, was there?

A. I found nothing.

Q. You did not find that it was a point in any surveys of any kind, did you?

A. It was not, to my knowledge.

Q. Did it have any name before you went there?

A. I heard no name.

Q. Sir?

A. I heard no name.

Q. Did you inquire as to whether it had a name?

A. No, I didn't.

Q. You named it Potomac Spring, did you?

A. Marked a stone there with the word Potomac on it.

Q. But you have it marked Potomac Spring on the map?

A. I named it Potomac Spring.

Q. You adopted that name?

A. I did. I had heard of the spring before, I was told that the spring existed, and that it was on the mountain at that point.

Q. You hadn't heard that it was known in that neighborhood as the red spring?

1750 A. No, I did not.

Q. And you didn't inquire amongst the people there to find out if it had a name or not?

A. Not as to any specific name; they all knew the spring.

Q. I notice on your map you have the word Potomac along the

branch leading to what you call the Potomac Spring, and the word River just below Station 31. Do you intend by that to put those two words together and indicate that that branch is the Potomac River?

A. That is the North Fork of the Potomac River, yes sir.

Q. Why did you not call it the North Fork of the Potomac River?

A. There is no room to get the lettering in on the map very well.

Q. I notice you have the words Fairfax Run on the stream leading from Station 31 to Fairfax Stone; where did you get that name?

A. It is customary to call most of the small streams runs in this country, and that leading to Fairfax Stone is designated Fairfax Run, in distinction from the other branch.

Q. That was your own name, was it not?

A. That was my own name, yes.

Q. Why did you not call the stream running to Potomac Stone Potomac Run?

A. Our claim was that it was the north fork of the North Branch of the Potomac River.

Q. You were giving names and you stated it was customary to call the small streams runs. You had called the other branch Fairfax Run, why did you not call that Potomac Run?

A. Because we located that stream as the western source of the North Branch of the Potomac River.

Q. You did it because you wanted to show the claim of the State of Maryland that that was the Potomac River?

1751 A. That it was the north fork of the Potomac River.

Q. And you selected the name Potomac for that spring for the same reason, did you not?

A. We did, yes sir.

Q. You otherwise might have called it Brown's Spring, might you not, wouldn't that have been more natural, as you were the discoverer, to call it after yourself?

A. I was not the discoverer.

Q. It hadn't had any name until you got there?

A. No name that I know of.

Q. You call the line Brown & Bauer line?

A. Call it the Potomac Meridian.

Q. Now, in your examination in chief you gave the levels of the various points; I would like to ask you to give to the Notary Public, so that he can set them down one after the other, levels of the following places as I shall call them out, or as you have them there?

A. The spring marked on the plat as the head of the south prong of the River is 3144 8/10 feet above tide. The Fairfax Stone and spring are 3162 4/10 feet. The Michler Spring, which was about 443 feet below or east of Fairfax Stone, the elevation is 3134 feet. The Potomac Spring was marked upon the plot; the elevation is 3287 1/10 feet. The head of the spring of Laurel Run, the elevation is 3228 7/10 feet. The summit of Back Bone Mountain, at a point where it is crossed by the Potomac Meridian, is 3356 3/10 feet. At station Zero, where the Fairfax Meridian crossed the Potomac River, was, by barometric reading, 2709 feet.

Q. Now, from the point which you designate as Potomac Spring, a Meridian Line was run to the Mason & Dixon Line; what part

of the establishment of that Meridian Line was done by Dr. Bauer?

1752 A. He did the astronomical work in determining and prolonging the meridian.

Q. Did he locate and establish any particular points along that line?

A. Yes sir, he did.

Q. What points?

A. Dr. Bauer on the Potomac Meridian established the point and rock planted 11 feet north of the Potomac Spring, a point upon the summit of Back Bone Mountain; a point on Rembold's Hill; a point upon Sollder's Hill; a point upon Taylor's Hill; two points upon Fike's Hill; a point upon Rodehever's Hill; a point upon Robinson's Hill; that is all.

Q. How far is Robinson's Hill from the Mason & Dixon Line?

A. It is about two miles and a half from Robinson's Hill, the line was carried forward by me.

Q. In what way were these points that Dr. Bauer established marked?

A. They were marked, as is customary in the first instance, by a solid hub, with a small brass nail in it; subsequently they were marked by me, planting, putting in sub-surface marks, in the shape of large stones, with the center meridian point marked with a copper bolt. These stones were planted with the object of making possible to reproduce the line at any time.

Q. Did you place stones of that character at any other points on the meridian except those that were established by Dr. Bauer?

A. There were points marked—not of that character, no; we did place such a mark on Cuppett's Hill, which was north of Robinson's Hill.

Q. Now, the work which you did on that Meridian then

1753 was simply to run the line from one of those points established by Dr. Bauer to the other, running the intervening lines between the points, as established by him?

A. Yes sir.

Q. And then extending it beyond Robinson's Hill to the Mason & Dixon Line?

A. Yes sir.

Q. You accepted the points he has located as showing the correct meridian and simply followed that?

A. We did.

Q. In running this Meridian, between those points, what was your purpose?

A. The purpose was to define the line more clearly upon the ground and to locate the streams, roads, land tracts, and other objects upon the ground; the contour of the country.

Q. You were not attempting to retrace or locate any old line that had been run along there, were you?

A. With the Potomac Meridian?

Q. Yes.

A. The object was to lay down actually upon the ground a Merid-

ian Line north from the North Branch of the Potomac River to the Mason and Dixon Line.

Q. Well, you were not attempting to trace out any old line that had ever been run there before, were you?

A. There were no marks of any old line ever having been run there.

Q. That does not exactly answer my question. Were you attempting to trace out any old line that had ever been run there before, was that your purpose?

A. No, we were not.

1754 Q. You had never heard of any line ever having been run there before, had you?

A. I had not.

Q. You didn't find any marks of trees, monuments, or other indications of any such line?

A. No.

Q. Was it your idea to establish this as the western boundary line of the State?

A. Dr. Bauer and myself were simply obeying the instructions of Counsel for the State of Maryland.

Q. Did counsel instruct you to run that line as you did, and mark it as you did?

A. Yes.

Q. Has it been your custom when acting as a surveyor, under order of Court, to put down permanent monuments upon a line that is then run for the first time under the direction of Counsel?

A. It is my custom to mark everything, as far as possible, with a permanent mark, land surveyed, or anything else. These marks, as I say, were sub-surface marks; no stranger could find them; it would take a reference to my notes to reproduce these lines in almost all places. There is one stone at Potomac Spring that is easily seen.

Q. You have frequently done surveying under orders of Court, have you not?

A. Well, yes sir.

Q. The object of such surveying is to ascertain what is on the ground, is it not rather than to make new lines?

A. Well, I cannot answer that question.

Q. The only authority you had for making a new line from that spring to the Pennsylvania Line was the direction from

1755 the Counsel for the State of Maryland?

Plaintiff objects.

A. That was my authority.

Q. It was not necessary to run and mark that line as you did in order to locate the Michler line, was it?

A. No, it was not.

Q. You could have run a straight Meridian Line from the Fairfax Stone to the Pennsylvania Line and determined whether the Michler Line was a straight Meridian or not, without running any other lines from any other point?

A. We could, yes sir.

Q. You didn't run any property lines along this new Meridian from the Potomac Springs to the Pennsylvania Line, did you?

A. We ran property lines near and crossing this line at several points, near to and crossing.

Q. You ran some old patents, but you did not run any present holdings, did you?

A. I hardly understand the question.

Q. You did not run any tracts of land, as they are now held, did you, extending over to this new line?

A. I ran—in one case, I did, yes sir.

Q. What case was that?

A. There were certain sub-divisions of the tract Diadem, patented by the State of Maryland, which extended to and across the Potomac Meridian.

Q. Who holds those tracts now, who owns them?

A. I can find that from my notes. By direction of Counsel for the State of Maryland I located a tract now held by Henry B. Albright beginning the location at a stone marked J. W. M.
1756 standing on the south side of a road leading from Cranesville to Henry Albright's Mill, and ran first north 82 degrees west 18 perches; second south 74 degrees west 26 perches; then south 66 degrees west 2 perches; north 29 degrees west 107 perches and 8/10ths; 5th course, south 37 degrees east 54 perches to a large white-oak; sixth course, is north 61½ degrees east 13 perches; 7th course, south 63 degrees east, the call being 139 perches corrected to south 63 degrees east 141 perches to pointers shown by Henry Albright, a witness produced on the ground on behalf of the State of Maryland, as the point called for at the end of the sixth line of this deed; 8th, south five degrees east twenty two perches, the call is to a pine and cherry tree of Colonel Joseph Feather's land; this course is corrected to south five degrees east 27 perches and eight links to the above trees; ninth, south 33 degrees west with the call corrected to south 32 degrees 12 minutes west 71 perches and ten links, to the beginning.

Objection by plaintiff to all testimony as to all said subdivisions unless the deed and chain of title is produced.

Q. Now, do you mean that those courses you have given is a subdivision of the original Diadem?

A. It covers part of the tract Diadem.

Q. Do any of the lines correspond with any of the original lines of Diadem?

A. No, they do not.

Q. It simply lies within the boundaries of the original Diadem as you located it?

A. Yes.

Q. Is all that piece of land, the boundaries of which you have just given, within the Diadem?

A. A small part of it south of the Diadem.

1757 Q. How is that tract marked on your map?

A. It is marked within the lines of the Diadem, and within small and fainter black lines the letters D. N.

Q. Have you the deed of Henry B. Albright containing the courses which you have given?

A. No, I have not.

Q. You have no certified copy of it, have you?

A. Well, I have not.

Q. Did you have when you made the location on the ground, when you did that surveying?

A. Well, the fact of it is in some cases the locations were taken from a deed, and in other cases Mr. Monroe had the notes, that is the fact of the case.

Q. In this particular case did you run the Albright line from a deed, or what?

A. We ran it from what we believed to be the correct courses and distances given in the deed.

Q. I want to know what actual paper you had before you when you made the survey?

A. I cannot say now, it has been too long ago; we have had so many papers in connection with the survey. Of course we aimed to have correct and certified copies wherever possible on the ground.

Q. Well, you cannot speak as to this particular tract?

A. That particular tract I cannot now, no we located the tract to be correct to the claim of the party owning it and living on it, it was within the lines which he claimed.

Q. You do not know, do you, that he traces his title back to the patent from the State of Maryland for the Diadem?

A. The title was derived from Crane, to the best of my knowledge.

1758 Q. Crane had a Virginia patent for that portion of the land, hadn't he?

A. I understood Crane held it under a Maryland patent.

Q. Didn't he have a Virginia patent?

A. I never knew of him having a Virginia patent; maybe he had outside of the lines of the Diadem.

Q. Don't you know that they are Virginia patents that do cover the Diadem?

A. Not for a fact.

Q. You never investigated that question?

A. I never saw any paper showing the lines, courses, or anything showing any claim of the State of West Virginia to the land lying on top of that.

Q. Well, now, was this Albright tract the only tract which you located?

A. All that I did, no, I located others.

Q. Will you please locate them?

Plaintiff objects, unless title, or chain of title, is produced.

A. I located a subdivision of Diadem which is marked and indicated upon the plots within finer black lines and designated by the letters D. P. In order to locate this tract, I began at the original beginning of Diadem, marked by the black letter E, upon the plot, and run the reference line north 60 degrees east 54 perches to a stake, which is the beginning of the deed from John Crane's heirs to

Joseph Feather, and ran this course and distances and calls as contained in said deed to John Feather as follows: First, north sixty degrees east 120 perches. The call is to a corner of Alpheus McNemar. This call was corrected to north — east 132 1/10 perches to the corner of said McNear's; then with said John McNear's
1759 and John E. Otto's line, north 70 degrees west 165 perches, the call being to a small red oak, said Otto's beginning corner. This is corrected to north 70 degrees west 160 perches and five links which said corner was pointed out to me by Albert Feather, a witness produced upon the ground on behalf of the State of Maryland, and thence from Nettle Ridge third, west 213 perches to David Wolfe's line, being the line corrected to north 89 degrees and 18 minutes west 217 4/10 perches to David Wolfe's line; thence with Wolfe's line, fourth south five degrees west 12 perches, the call being to a red oak and chestnut pointers, corner to Wolfe and Jonathan Wilhelm; thence with Wolfe's lines reversed, 5th, south 28 degrees, fifth, south 28 degrees west 27 perches; south 81 degrees west 60 perches, corrected to north 86 degrees west 61 perches; 7th, south 17 degrees west 134 perches, corrected to south 17 degrees 12 minutes west 147 2/10, perches; 8th, north 72 degrees west 47 perches to a mountain ash in Samuel Crane's line, being the call; this was corrected to north 73 degrees 30 minutes west 42 9/10 perches; thence with said Crane's line, 9th, south 5 degrees east 16 perches, corrected to south 5 degrees east 27 perches and 18 links; 10th, line, is south 32 degrees and 12 perches west, the call being 105 perches to a stone marked J. W. E., standing on the south side of a road leading from Cranesville to Henry Albright's, and in his line. 11th line, south 25 degrees east 48 perches; the 12th line is north 74 degrees east 45 perches to the rear of line of lots known on the plot of the village of Cranesville as lots 51 and 49. The following nine lines of said deed are omitted, for the reasons that the lines embraced within them lies wholly outside the lines of the Diadem. The end of the 12th line of said deed is also the beginning of the 22nd line of said deed from which point I ran the 22nd line north 56 degrees east 138
1760 perches to the westernmost corner of the graveyard lots, being the call, corrected to 56 degrees and fifty minutes east 138 2/10 perches to the corner of graveyard lots, and at the end of thirty-nine perches and this line that crosses the 8th line of the whole tract called Diadem; thence, 23, south 75 degrees east 14 perches; 24, north 78 degrees east 36 perches and nine links, being the call, corrected to north 78 degrees east 35 perches nine links to a stake on the north branch of the Cranesville and Sang Run road, in line with the division fence of J. Wesley Feather, and the heirs of Michael E. Feather; thence 25, south 5 degrees east 96 perches, corrected to south five degrees east 65 perches and eight links to the end of 572 perches, and 20 links on the 8th line of the Diadem; then with the 8th line of the Diadem we ran east 207 perches and 1/5th to the end of said 8th line of the Diadem; then with the beginning line of the Diadem to the beginning of said tract, and from that point by a straight line to the beginning.

Q. Did you run actually on the ground from the end of the 8th line of the Diadem to beginning point of the Diadem at E?

A. No, I didn't.

Q. Could you now give the courses and distances of that line exactly?

A. No, I cannot.

Q. Now, this subdivision is marked on your map, designated how?

A. Designated by the black letters D. P.

Q. Is it all claimed by one person at present, or when you ran it in 1897?

A. I cannot say in regard to that; I ran it according to a deed from John Crane's heirs to Joseph Feather.

Q. Now, look at that plat; I notice over near the point marked 23 miles, on the Potomac Meridian, this tract D. P. appeared to
1761 run south also of the line of the Diadem; does it in fact so run?

A. Yes; the lines do, that is, the deed by which we ran.

Q. If you followed the lines of the deed, you would there run outside the lines of the Diadem?

A. Yes.

Q. And wouldn't you also run outside the lines of the Diadem on the line running nearly south, east of the point marked Spring?

A. Yes, you would.

Q. That line extends also below the eighth line of the Diadem, does it not?

A. Yes.

Q. You didn't run it out its distance, but stopped at the eighth line of the Diadem, is that correct?

A. Yes.

Q. Then the next line, if run by deed, would run with the dotted line as you have it on your map, instead of with the eighth line of the Diadem; is that correct?

A. It would.

Q. Then how would the remaining lines of the deed, if run by the deed instead of following the outlines of the Diadem, run?

A. Generally in a northern direction.

Q. Have you anything on the map to indicate how that would run?

A. There are broken lines which show approximately the course of the lines of the deed.

Q. Those broken lines are laid down by protraction from the deed?

A. Yes.

Q. Now, where did you start with the running of that subdivision?

A. Started at the beginning of Diadem, for reference.

Q. You started for reference

A. Yes sir.

1762 Q. But the real beginning point was where?

A. It calls to begin certain courses and distances from the beginning of Diadem.

Q. Is it at the point where the dotted line strikes the first line of Diadem on the map?

A. Yes.

Q. Now, then, Mr. Brown, this tract D. P. has no line corresponding with any of the exterior lines of the Diadem, except first line, has it?

A. No, it has not.

Q. And it extends outside the lines of the Diadem at the two points indicated in testimony above?

A. Yes sir.

Q. Do you know who claimed to be the owner of this piece of land in 1897, when you were there, was anybody living on it?

A. According to the agreement concerning the surveying, made between us, they were each represented by an engineer, and it was agreed that Mr. Monroe should survey for me at times, and I would survey for him on other occasions. I was not present when this tract was surveyed; I cannot tell who was living on it.

Q. Did you do any other surveying within the boundaries of Diadem?

A. Yes, we located several other tracts which are marked upon the plot in black letters, and the beginnings, courses and calls and distances are in the return.

Q. Take the division marked D. C. What did you run that by?

A. Within the lines containing the letters D. C. in black letters, there are two subdivisions, one of which has not been marked upon the plot; in fact, the dividing line between the subdivisions is not.

1763 Q. Whose subdivisions are they, who are the parties?

A. One was at that time, John E. Otto and the other Edwin Albright.

Q. Now, that portion D. C. has three lines that conform to the exterior lines of Diadem, has it not?

A. There are part of four lines, two full lines, the second and third, and part of the first and fourth—yes, yes, your question is correct, part of the first, second and third lines.

Q. Within the lines, the first line of subdivision D. P. also conforms to the exterior line of the Diadem, is that correct?

A. Yes.

Q. Now, those lines, that is the first line of the division D. P. and the first, second and third lines of D. C. are east of the western boundary of the Military Lots just above them, are they not?

A. Not wholly.

Q. Well, practically so, are they not?

A. They are in part east.

Q. Well, what part is not east?

A. I cannot state that.

Q. Now, are they not all east of what is known as the old State line?

A. I do not know of any old State line there; I was not shown any old State line.

Q. If you draw a line due south in extending the western line of lot No. 1462, as laid down on your map, will not that line leave that first, second and third lines of subdivision D. D. to the east?

A. It would, yes.

Q. And wouldn't it leave nearly all the first line of subdivision D. C. to the east?

A. It would leave at least half of it.

1764 Q. Wouldn't it leave a good deal more than half of it?

A. Yes, it would, according to the plot.

Q. Take the subdivision D. D., adjoining D. C. on the west, what did you run that by?

A. Why, I run that by a copy of a deed.

Q. What deed?

A. Deed to Ethbell Falkenstein.

Q. Do you know who it was from?

A. I do not know who the deed was from; I didn't find it.

Q. That deed didn't lie wholly within the Diadem, did it?

A. My understanding was that it did; that it was a deed, that it was derived from John Crane—not directly.

Q. Didn't the courses and distances extend above the northern line of the Diadem if run out?

A. I don't think it did extend beyond the lines, not to my knowledge.

Q. What are those dotted lines?

A. Those dotted lines on the map are reference lines.

Q. Now, take the tract D. E.; what did you run that by?

A. I ran that by a deed to Henry Roach.

Q. From whom?

A. I have not got the record from whom.

Q. Now, do the lines of that deed lie wholly within the Diadem?

A. They do as far as I know.

Q. Well, as far as you know.

A. Well, as far as my record shows, they do.

Q. Do you know anything about who Henry Roach is?

A. No, I do not.

Q. Have you anything to show the date of that deed?

1765 A. I have not in the record before me.

Q. Have you anywhere?

A. Probably I have it here; I will look. I do not find a copy of the record, but the tract was run according to an abstract of the deed.

Q. Did you take it from the deed, or was it furnished you?

A. It was furnished me.

Q. You cannot speak as to its correctness?

A. No, I cannot.

Q. Now, according to the way you ran this tract D. E., none of the lines as given you would extend beyond the exterior lines of the Diadem?

A. They do not.

Q. What did you run the tract D. F. by?

A. I ran that by an abstract of a deed to David Wolfe.

Q. Do you know who that was from, that deed?

A. No, I have not the record.

Q. Now, did any of the lines of that deed extend beyond the exterior lines of the Diadem?

A. They do not, as given to me.

Q. What did you run G. H. by?

A. I have no record of running D. H.

Q. Do you mean that it was not run?

A. No, I do not mean that it was not run, but I have not the record here.

Q. Was it run?

A. It was run upon the ground, yes.

Q. Where is the record of it?

A. I have not—it has not been included in these returns.

1766 Q. Have you it in your surveyors note book which you used?

A. I might find it in my note book.

Q. If you run it you have it in your notebook, have you not?

A. I should have it, yes. I cannot find the record of D. H.

Q. Please give us the notes of D. F. as you have it in your notebook?

A. I began at a stone shown me by David Wolfe and ran north twenty three degrees east fifteen perches; south 64 degrees east 15 perches; south 64 degrees east 12 perches; south 55 degrees east 95 perches; north 28 degrees east 7 perches; north five degrees east 33 perches.

Q. Is there any call for objects in the calls?

A. There is a call at the end of the fourth line, for a red oak.

Q. Proceed?

A. The sixth line, north 54 degrees east 40½ perches; 7th, north 38 degrees west 172 1/2 perches.

Q. Now, wouldn't that line take you beyond the exterior boundary of the Diadem surveyed that distance?

A. Well, I cannot say from the map; I do not remember whether that line crossed the fifth line of the Diadem or not; I have no record to that effect.

Q. Well, then, go on with the other calls?

A. Those are all the calls I have in the notebook.

Q. Do I understand that those were all the courses that were run?

A. Those are all I have recorded in this place.

Q. What is the fact, as to whether you ran the outlines or not of the tract D. F.?

A. The 5th line of the Diadem had been run and notes taken to the stone pile that is referred to at this place.

1767 Q. Then Mr. Brown, is it not a fact that the sixth line of the tract D. F. would have extended beyond the fifty line of Diadem, but that you in surveying stopped at that line, and then made your plot to conform to the line of the Diadem, and ran the other lines of the tract D. F.?

A. I do not know, but know the line extended beyond the fifth line of the Diadem, do not know whether it did or not; I didn't actually run any of the lines beyond the 5th line of the Diadem, outside of it.

Q. Don't your notes show whether you stopped in running the sixth line short of the distance?

A. No, they do not.

Q. What scale is your map on?

A. One thousand feet to the inch.

Q. Now, will you take your rule and measure the sixth line of the tract D. F. as laid down on the map, and state how many poles it is?

A. It is about 120 rods long, according to the scale on the map.

Q. And the call is for what?

A. 172.

Q. So that if the distance were run out it would run some 52 rods beyond the fifth line of the Diadem?

A. It would run beyond the line of the Diadem.

Q. Now, can you find the notes of your actual running of D. E. in your notebook?

A. I have those notes.

Q. In your notebook I mean?

A. Yes sir, taken from the notebook.

Q. Please refer to what you have in the note book?

1768 A. Well, it is almost impossible to give it at once from the notebook, because in running those subdivisions we ran some of the lines of the tract, and then continued on the exterior lines of the Diadem, and then concluded the other lines of the first tract by subsequent surveys adjoining, so that the notes are not consecutive always in the notebook, and it will take sometime to study them out and give it on this paper, I have the survey as compiled by the several lines run.

Q. Please give us what you have in your notebook as to the running of tract D. E. just as it is in the book; at what point was the survey of the tract D. E. begun?

A. The second course is north 30 degrees east 46 perches; third course is north 25 degrees west on that line; I ran 21 perches and 20 links to Salt Block Run, and in all 37 perches and 22 links to the Diadem line.

Q. Well, now, did that take up the whole distance of the line called for?

A. I have not—I cannot say whether it did, or not.

Q. Isn't it a fact that the call of that line is north 25 degrees west 158 perches, crossing Salt Block, running to the stone pole or a large rock on Fike's Hill?

A. I cannot state.

Q. Well, if that is the call, then you fell very much short of the distance, didn't you?

A. I did.

Q. And that call would carry you very far beyond the exterior line of the Diadem?

A. Yes sir.

Q. Now, is there nothing in your notes to indicate whether you stopped short of the distance or not?

1769 A. No, I could not tell you, I have got nothing to show; it shows I have stopped at the Diadem line.

Q. Now, Mr. Brown, where are these papers that you ran by?

A. Well, as I stated, I took some of the courses and distances from deeds and I got some of the abstracts from Mr. Monroe.

Q. Where are they now?

A. Well, I think in some cases Mr. Monroe had the copies with him, and in some cases I got them of him.

Q. Do you know whether this particular tract D. E. was one that you got from Mr. Monroe?

A. No, I cannot say.

Q. Nothing to indicate?

A. No.

Q. Now, do you adhere to your former statement then, Mr. Brown, that the lines of that tract D. E. if run by the calls of the deed would conform to the exterior lines of the Diadem?

A. No, that evidently was wrong; I said at the time to the best of my knowledge they would be; if these calls are as you read them, they would extend beyond, undoubtedly.

Q. Now, going to D. H. Do I understand that you have no record of running that?

A. I have not the notes of the running of D. H.

Q. Where are they?

A. They are mislaid somewhere; I have not got those.

Q. Did you run the tract?

A. We ran what was within the lines of the Diadem, yes.

Q. I notice that you have extended dotted lines, conforming to D. H., beyond the exterior lines of the Diadem. Do those dotted lines represent the lines of the paper first given to you?

1770 A. They do to the best of my knowledge.

Q. So that that tract would not conform in its exterior lines with the exterior lines of the Diadem?

A. Not as laid down on the plot.

Q. The same is true of tract D. N. is it not?

A. Yes sir; yes sir.

Q. It extends south of the Diadem?

A. Yes sir, part of it does extend south.

Q. Now, what about D. K. Have you the running of that?

A. Yes, I think so.

Q. What did you run that by?

A. We ran it by an abstract of deed to Eli Albright.

Q. Anything to show who that was from, or the date?

A. I have not the record.

Q. Can you tell whether the lines of the deed, by which you ran, extended beyond the exterior boundaries of the Diadem or not?

A. I ran the fourth line north 15 degrees and one half east 7 links to the sixth line of the Diadem, and to the best of my knowledge that last line ran beyond the Diadem; I ran no further on that line.

Q. Then your understanding is that that tract extended north of the sixth line of the Diadem?

A. The calls will take it north.

Q. If run; now is it not also true that the calls would take it south of the southern line of the Diadem?

A. The 14th line would run south 40 degrees west 99 6/10 perches to a stake at the end of 91 9/10 perches on the 9th line of the Diadem; that line I believe also extended south of the eighth line. I made no survey further south.

1771 Q. I notice a small corner in the northwest corner of the Diadem as laid down on the map with the letters D. E. just outside of the line; what does that small corner indicate or represent?

A. That represents the portion of the Diadem held and under fence by J. A. Kelley.

Q. Is that all the land that Kelly has, that little corner?

A. That is all he has within the Diadem.

Q. Has he any other generally?

A. Yes, he owned that land outside.

Q. The large body?

A. That I do not know.

Q. You did not run the land outside?

A. No.

Q. That means, does it, that Kelley's tract of land extends into the Diadem there at that point as represented?

A. It represents the land, which he has under fence. Its connection with other tracts I have no knowledge.

Q. Did you survey that little piece?

A. I surveyed it according to the lines of the Diadem, and according to its position as indicated by the fence and certain marked trees.

Q. You didn't run by any paper?

A. Well, no; I didn't. I ran according to the marked corners shown me by Mr. Kelley, as within the lines of the Diadem.

Q. Did Mr. Kelley say they were within the lines of the Diadem?

A. I don't know that he did.

Q. You first ran the exterior lines of the Diadem and then ran this line that Kelley pointed out as his line that were within the Diadem?

1772 A. Yes sir.

Q. Did you have his deed to run it by?

A. My recollection is that we didn't, the land is all cleared and it is a very small piece; you can see from one corner to the other without any trouble, and I think we merely went to the Diadem line and measured.

Q. There is no fence corresponding with the 7th line of the Diadem is there?

A. Not at that point.

Q. The fence conforms to the little corner that you have cut off?

A. Practically, yes.

Q. It then extends westward?

A. The cleared land does, yes.

Q. Now, take D. L. What does that represent?

A. That represents a portion of the Diadem, owned by Hiram Renninger, and it was located by beginning at the end of 118 2/10 perches on the 7th line of Diadem, and running with the 7th line south 34 degrees west 135 2/10 perches to the end of the 7th line, and then with the 8th line of Diadem east 14 perches, then to the beginning.

Q. Does Hiram Ringer own the land west of that strip?

A. I do not know whether he does or not.

Q. Well, how do you know he owns that little strip there?

A. That portion, my recollection is was located same as the portion marked D. I. was. The adjoining section to the east marked D. M. belonging to W. C. Albright, that calls to begin at the end, not to the beginning, but ran to the end of 04 perches on the 8th line of the Diadem.

1773 Q. That is the call in the deed?

A. That is the call in the deed, yes, with W. C. Albright, and this is the line to the west of W. C. Albright.

Q. Now, Mr. Brown, are you sure that there is a call in the W. C. Albright's deed for the 8th line of Diadem?

A. I cannot say whether there is a call in the deed. That is the way the survey was made, that is the way I ran the survey.

Q. Going back to D. L., is it not a fact that Renninger owns the land west of that strip you have laid off there marked D. L.?

A. That I do not know; I do not know whether he does or not.

Q. You don't know whether he owns that piece or not; didn't you locate that little strip by the line fence between Ringer and Albright?

A. Well, the fact of the case was that the 7th line of Diadem was run and 14 perches on the 8th line, and the remaining line of that strip was laid down by protraction, that is, the actual fence.

Q. Oh; is there not a line of the fence there between Ringer and Albright?

A. There is a public or private road, I do not remember the line fence, there probably is a fence along the County road, but I could *could* not say exactly, as to the relation between the line and the road.

Q. Is it not a fact that Mr. Renninger owns a tract of land lying west of Albright much larger than the little strip there, and that you simply located the Diadem so as to take that little strip off of his land?

A. I really know nothing about Mr. Renninger other than I was told that the strip lying west of Mr. Albright was owned by

1774 Mr. Ringer. That is all I know in regard to it.

Q. Well, now, take the tract D. N. What Albright is that?

A. W. C. Albright.

Q. Is there any part of his tract lying outside of the exterior boundaries of the Diadem, south of it?

A. I cannot say in regard to that. I surveyed according to the lines lying within the Diadem, beginning at the end of the 118 2/10 perches on the 7th line of the Diadem, and running south 30 degrees west 126 perches to a stake at the end of 14 perches on the 8th line of the Diadem; second, I ran east 77 perches and 9 links to the land of Eli Albright; third, north 40 degrees east 99 6/10 perches; fourth, north six degrees and one-half west 19 3/10 perches to a hickory near a spring, that is the beginning.

Q. Your report of your survey states that you ran one of your lines to the 8th line of the Diadem. Can you tell from that whether that was the full distance of that line, or whether you stopped because you had gotten to the Diadem line?

A. I cannot tell whether it is the full distance or not.

Q. If the line had been longer, you would have stopped when you got to it according to the method you were running?

A. Yes sir.

Q. That is what you were doing?

A. Locating what was in the lines of the Diadem, yes.

Q. Now, tract D. O. in which the word "Spring" occurs, what does that represent?

A. The portion marked D. O. within the lines was merely laid out in town lots, the town of Cranesville, lying principally within that portion of the Diadem.

Q. Does the town of Cranesville lie wholly within D. O.?

1775 A. The town principally I think does.

Q. Would Browning's store be in there?

A. It would.

Q. And the Van Meter Hotel?

A. It would.

Q. Do you know by whom those lots were laid out?

A. No, I don't.

Q. Or when?

A. No, I do not know when, some years ago, though, I understand.

Q. Well, was there any lots laid out south of the Diadem?

A. Not to my knowledge.

Q. Did you have before you the plot of the town as originally laid off?

A. No.

Q. Do you know whether the plot conforms to the line D. O. to the lines of D. O.?

A. Well, one of the lines of that tract D. P. calls for the lines of these lots.

Q. I will ask you this, Mr. Brown, if you can state that any of the subdivisions lying west of the line ran by Julius K. Monroe in 1894 and any of the subdivisions of the Diadem conform in their exterior lines or any of them, with the exterior lines of the Diadem?

A. Well, I have not the papers to show, but according to the testimony we have just given, nearly all the tracts extended somewhat beyond the lines of the Diadem.

Q. They all do, unless it is the tract D. D., do they not, or else lie within it like the tract D. G. wholly, would that be your judgment?

A. As I say, I have not the papers, but that is my idea.

1776 Q. This surveying within the lines of the Diadem as you have been describing it, is the only location of property lines along the Potomac Meridian that you made, is it?

A. No I surveyed other tracts.

Q. What others?

A. Granted by the State of Maryland.

Q. Well, what others?

A. The tracts that I have described before, beginning with the Royal Charlotte.

Q. Does that extend over the Potomac Meridian?

A. No, that does not extend beyond the Potomac Meridian; I located a tract, Non Pariel, which was granted by the State of Maryland, which extends west of the Potomac Meridian.

Q. You simply located the original grant, did you, of Non Pariel?

A. The original grant, yes sir.

Q. You didn't attempt to locate the present holdings within that grant?

A. I located the entire grant, I located another tract, the Elder Spring.

Q. Does that extend to the Potomac Meridian?

A. No, it does not.

Q. It extends beyond the Michler line as located by you?

A. Yes sir.

Q. Now, did you find any of the original corners in Non Pariel objects called for?

A. No, the tract was located according to natural calls.

Q. Have you the calls of the tract here?

A. I have.

Q. Will you let me see them?

1777 (Calls produced by Mr. Monroe.)

A. This tract calls to begin at three *b*ounded hickory trees standing on the west side of a hill, 16 and a quarter miles on the east side of an old road that leads from Dunkard Glades to Dunkard Bottom, the above trees standing about 40 poles from a meadow known as the Snowy Glade, about two or three miles from Murley's Glade.

Q. Did you find those three bounder hickory trees, or either of them?

A. I found no bounded hickory trees, but I began the location near hickory trees standing on the west side of a hill, near an old road leading from Dunkard Glade to Dunkard Bottom, forty perches from said Glade.

Q. Was the hickory tree marked?

A. They were not marked, that is the young trees.

Q. Is the road there?

A. Yes sir.

Q. Do you knew where the Dunkard Glade is?

A. Well, I was told that the road led to the Dunkard Glade, the Dunkard Glade is west of this point

Q. Now, did you find any marked corner, or monument of any kind in running that tract?

A. No, I didn't.

Q. Did you run all around it?

A. I ran by actual survey the first ten lines of the tract and the balance, the remainder of the lines, was laid down on the plot by protraction for illustration.

Q. What points on your map represents the beginning of Non Pariel tract?

1778 A. The black letter X.

Q. The ten lines which you ran are on which side of the tract?

A. They are on the east side.

Q. Do those ten lines carry you to the extreme northern point of the tract?

A. Yes, they do.

Q. Mr. Brown, you said that point X was forty poles from what?

A. Forty poles from the Glade.

Q. What kind of a glade?

A. Well, an open glade that is, wild grass, without any timber.

Q. How did you determine it was forty poles from the glade?

A. Measured it.

Q. What defines the boundery of the Glade?

A. Well, the growth varies, saplings and trees.

Q. Is it well defined?

A. I cannot recollect now; my impression is that we have no trouble in deciding very nearly where to measure as the eastern limit of the Glade; it extends towards the west.

Q. Now, what had you to guide you definitely to the point you selected as the beginning corner of that tract?

A. The State of Virginia patented to Francis and William Deakins, on the 22nd day of September, 1789, a tract of six thousand acres which calls for the beginning of the tract patented to the State of Maryland under the name of Non Pariel, at the end of the 46th line, and I located by actual survey the above Deakins tract, the six thousand acres, and planted a stake at the end of the 46th line which point corresponded with the natural calls of the old road the Glade and the kind of timber and on the ridge as mentioned in the beginning of the patent, Non Pariel.

1779 Q. What is the call of the Deakins six thousand acres for the Non Pariel?

A. It calls for the beginning of said tract called Non Pariel.

Q. Calls for the beginning?

A. The end of the 46th line of the Deakins six thousand acre tract calls for the beginning of the tract called Non Pariel.

Q. You have located Deakins' six thousand acre tract on your map have you?

A. I have on the ground.

Q. Have you colored it on the map?

A. Tinted it.

Q. All of it that lies east of the Potomac Meridian, but you have not colored the part that lies west of the Potomac Meridian?

A. I have not.

Q. Does the tract extend west of the Potomac Meridian?

A. It does.

Q. What indicates where it extends west?

A. The lines numbered from portion of 45th, 46th, 47th, 48th, 49th and 50th lines, indicated by black letters are west of the Potomac Meridian.

Q. You don't seem to have located the lines for the 50th?

A. I have not.

Q. Why not?

A. Because those were all that were pertinent to this work; we

were only interested in laying down those immediately adjoining tract Non Pariel.

Q. Was there any trouble to locate the others?

A. Only for the time.

Q. Does Deakins' six thousand acre tract call for any of
1780 the lines of Non Pareil, excepting the beginning corner?

A. The 45th line of the William Deakins six thousand acre tract calls to run west 590 perches to a tract of land patented in Maryland called Non Pareil; then 46th line, south 114 perches to the beginning tree of said land called Non Pareil, and with the following lines of that reversed, 47th, south 24 degrees east 371 perches; 48, south 80 degrees west 90 perches; 89th, south 30 degrees west 36 perches; 50th line, south 40 perches.

Q. Those are the lines called for by the six thousand acre tract?

A. In the patent of Francis and William Deakins' six thousand acre tract.

Q. Are those now the only tracts that you located along the Potomac Meridian, as you call it?

A. Yes, those are the only tracts.

Q. That is, the Diadem and Non Pareil?

A. I located a few lines of the William Deakins 222 acre tract.

Q. Is that a Maryland or Virginia grant?

A. That is a Virginia grant, but from the center of the tract to the hickory tree it is a Virginia patent.

Q. That is a Virginia patent?

A. That is a Virginia patent.

Q. And the Deakins six thousand acres is a Virginia patent, is it not?

A. Yes sir.

Q. You have spoken of the difference between running by transit and compass; what is the difference in running between those two instruments, as to accuracy?

A. Well, the work by the transit is much more accurate.

Q. Why?

1781 A. Because of the accuracy and delicacy of the construction of the instrument, and by the fact an error in the work is only made by some unusual accident, which would be observed by the engineer, and whereas—I should add, in the use of the transit or theodolite, the engineer has the advantage of a telescope which aids the sight and of the delicately adjusted cross-*q*ires in the instrument; also the solid foundation and tripod on which the transit is mounted. Whereas by running a line with a compass, as it was done 100 years ago, and is usually done by surveyors at the present, it is mounted upon a Jacob's Staff*i*, and is not as secure as the other, and the line which is to be run is read from the point of the magnetic needle, which I have shown in testimony is subject to constant change.

Q. Doesn't the transit have a magnetic needle?

A. Yes sir.

Q. Does the engineer run by his needle in operating the transit?

A. Not on the work which the State of Maryland did; the needle

was not used in any case, unless it was for illustration. In one case only we used the needle in laying down Laurel Run for illustration in the plot.

Q. Then what have you to guide you in transit work, if not the magnetic needle?

A. In the present survey we had the two Meridian Lines to guide us and all lines whose courses are given in this work refer to this Meridian.

Q. Well, when you ran lines off the Meridian, how did you run?

A. We ran practically at right angles to the Meridian.

1782 Q. Now always, did you?

A. We did in check, references and everything of that sort.

Q. Did you in running the property lines?

A. Oh, no the property lines were run by surveyor's compass or by the needle, as they had been originally.

Q. Why did you take the surveyor's compass in running property lines, instead of the transit?

A. The reason of that was that the land grants, land tracts, which were surveyed, had been originally run with the compass, and we employed the same method to reproduce them which had been formerly used.

Q. Then you consider it proper where you are going to reproduce or retrace lines formerly run by surveyor's compass, to use that instrument for the purpose, do you?

A. In reproducing a land tract.

Q. In reproducing any tract the line run by compass, would you consider it proper to use the compass for that purpose?

A. I would in a land tract, but I would not in every way, or at all times.

Q. Why?

A. Because since olden days the more accurate methods are in use.

Q. But if you are going to reproduce a line that has been run with a compass, you are not seeking magnetic accuracy, you are seeking lines and objects?

A. Yes sir.

Q. Now, why can't any line originally run by a compass be just as well retraced by a compass?

1783 A. Because the declination is constantly changing, and further more the needle is subject to violent magnetic storms at certain times when in the field.

Q. That would apply to the land grants?

A. Yes sir, that would apply to land grants and they are very uncertain things to locate.

Q. And yet you employ the compass for that purpose?

A. We do.

Q. Is there any more accurate method you might adopt for the land grants than the surveyor's compass?

A. That is the most practicable way to do it.

Q. Now, if a line were run and marked in 1789 by the surveyor's compass from the Fairfax Stone to the Mason & Dixon Line, and then another astronomical line was run and marked in 1859 from

the same point to the same line; is there any reason why those two lines could not be as well ascertain- as to their location by the use of the surveyor's compass in running a reference line as by the use of the transit or any other instrument?

Objected to because it is assumed, without sufficient proof in the case, that a line was run in 1789 from the Fairfax Stone to the Mason & Dixon Line?

A. I think I can answer that question now. They could not be so well located because of the constant fluctuations to which the magnetic needle is subject, some of which I have described. In addition to those already mentioned, I can add that local attractions in the earth itself and the carelessness of surveyors in not removing all iron and steel from their person, such as knives, watches, etc., which have a marked effect upon the needle. In my work upon the Coast Survey I actually had not a particle of metal on my person,
1784 even buttons were removed from the clothes, and in the most accurate observations, the eclipse in 1900, the men were even required to take off their shoes and make their observations in their stockings. It would be impossible to accurately produce points in a meridian line which requires the most accurate instruments for its production, with a compass. I am speaking of a meridian line of a series of miles.

Q. If you could find the actual monuments upon the astronomical meridian line run in 1859 could you not, with the surveyor's compass, ascertain the relation of tracts of land or a former line run by a compass to this astronomical line?

A. Yes sir, you could find the relation, of course that question is not very definite.

Q. Assuming that two lines were run, one by Deakins in 1789 by a compass from Fairfax Stone to the Pennsylvania line, and another by Lieutenant Michler in 1859 by careful astronomical observations, and you could find the actual monuments placed upon his meridian line by Lieutenant Michler, could you not, with a surveyor's compass, ascertain the relation of the old Deakins Line to the Michler Line upon the ground?

Objected to by Counsel for Plaintiff upon the ground that there is no sufficient proof of the running of the Deakins line in 1789.

Q. In that case the burden of error would be—I understand you are running or propose to run, between the two lines. In that case the surveyor's compass would not be the greatest source of error, it would be in the mechanical effect of chaining, because the perpendicular would be so nearly at right angles that the burden of error would fall upon the mechanical part of the chain.

Q. You would always have that error in chaining, no mat-
1785 ter what sort of an instrument you used?

A. Yes, you would, where you depend upon the steel tape.

Q. Now, assuming that you could find the actual monuments placed by Lieutenant Michler in his line in 1859, could you not locate the land grants along in the neighborhood of that line with a surveyor's compass?

A. In reference to that line, you could, approximately.

Q. Could you not do it as correctly as you could with the transit?

A. You could locate the land grants.

Q. That is what you actually did, you used the compass?

A. I used the compass in locating the land grants, yes.

Q. Now, in the use of the transit, do you not depend upon maintaining a straight line from the different points at which you set the instrument, by foresight and back sight alone?

A. Yes, and the reading of the degrees of the graduated circle; you mean in producing the line?

Q. Yes?

A. With the transit, yes.

Q. Now, if you should make an error at any point on your line, in your front or back sight, wouldn't that error continue from that time on until you get to the end of your line?

A. It would, yes.

Q. You would have no means of correcting it, would you?

A. No.

Q. Now, in your own actual running of this line, did you not undertake to run by the transit the line from the Fairfax Stone to the top of Back Bone Mountain, taking the sights upon the monuments on that mountain, and did you not miss the monument by a considerable space?

1786 A. Yes sir, that was a fact, but afterwards——

Q. Why was that?

A. That was from an imperfection of the method used at that time, which were subsequently perfected; I was not at that time, however, attempting to establish any point in the Fairfax Meridian.

Q. What were you endeavoring to do?

A. I was endeavoring to run a reference line from the Potomac Stone to the point established by Dr. Bauer in the Fairfax Meridian on top of the Back Bone Mountain, that reference line being used to guide the measurements as to the crossing of the streams and the other objects upon the ground.

Q. But you were then endeavoring to run with the transit a straight line between the stone and that monument, were you not?

A. Between the stone and the point in the Fairfax Meridian on the Back Bone Mountain.

Q. Now, what distance did you miss that point?

Q. I do not remember exactly; in the neighborhood of twenty feet, something like that.

Q. So that complete accuracy is not always attained whether you use the transit or a compass, is it?

A. It is seldom attained in any scientific work; we aim at it and get as near as we can.

Q. If you had continued that line as you started it to the Pennsylvania Line, where would it have struck the Pennsylvania Line with reference to the end of the Michler Line?

A. I never continued from that point.

Q. But assuming that you had?

A. That I cannot say. If we would run such a line, we would

again have established a point in the Meridian on the sum-
1787 mit of the Back Bone Mountain before continuing.

Q. I believe you stated that the Military Lots are not laid out along a straight line, along their western border, am I correct in this?

A. Yes.

Q. And I understood you to say that you had seen the Deakins Map at Annapolis of these Military Lots, and that it did not show that the western boundary of these lots was a straight line, is that correct?

A. My recollection, as I stated at that time, that there was no western line shown on that map.

Q. Does not the Deakins Map, as originally made, now on file at Annapolis, show that, with the exception of the grants that had been made, where there are now gaps in the lots, that with these exceptions the western boundery of the lots is a straight line, does not the map show that?

A. I cannot say; it is some years since I have seen the map.

Q. Now, in running the Military Lots, which you located, did you locate them by finding the original objects called for in the survey, of said lots, or did you locate them by han-ing them onto some of the old tracts?

A. I located them according to the original calls in the certificates issued by the State of Maryland.

Q. Did you find the original corner in any case, the objects called for at the original corners, in any case?

A. I found no corners of any of those which are laid down upon the plot.

Q. Then how did you locate them?

A. I located them according to their original calls, as for
1788 example, lot 2952 calls to begin at the end of 34 perches on the first line of Cherry Hill, granted to William Deakins, Jr., and running thence south 117 perches; east 80 perches; north 78 perches to the second line of Cherry Hill; then north 30 degrees west 34 perches; then by a straight line to the beginning; in each case the lots laid down upon the plot on behalf of the State of Maryland call to begin at a given distance upon one of the lines of the older land grants issued by the State of Maryland and not for any specific object upon the ground.

Q. Then if the tract called Cherry Hill is, for any reason, not properly located by you, lot No. 2952 would not be properly located either, would it?

A. I had proof as to the original beginning of Cherry Hill, the tree standing on the ground?

A. I asked you the hypothetical question, if there should be any question, if there were no beginning of Cherry Hill, there would be no beginning of lot, if any mistake has been made in the location of Cherry Hill, that mistake would apply equally to lot 2952?

A. It would begin at the end of 34 perches of the first line of Cherry Hill, wherever that might be.

Q. But, if you have not located Cherry Hill correctly, then you would not have located lot 2952 correctly?

A. I have located it correctly.

Q. I am not asking you as to whether you did locate it correctly or not, I am asking you if you didn't locate it correctly, wouldn't it follow that the lot was not located correctly there?

A. The lot hangs on Cherry Hill.

Q. So that the accuracy of the location of the lot depends upon the accuracy of the location of the tract?

A. Yes.

1789 Q. And that is so with reference to all the Military Lots which you have located on your map?

A. Yes sir.

Q. They all depend upon the location of the tracts to which they are related?

A. They do.

Q. Now, did you run all the lands of the tract called Cherry Hill?

A. Yes sir, I did, by actual survey.

Q. Did you find any of the original corners called for, I mean any of the objects called for in the original grant?

A. I took these old Maryland grants that they call for, the only object is at the beginning, there was no other corner called for.

Q. Then you just ran from the tree that was pointed out to you by courses and distances?

A. By courses and distances, according to the original warrant.

Q. Did you find any marked trees, or lines, running around, anciently marked, to suit the survey?

A. I found no—much of the land was there open, the ground, a considerable portion of Cherry Hill, no timber of any considerable character, and I found no marked lines which I considered to be the originals, outside of the beginning corner.

Q. Did you run all the lines of the Granary; I believe you said you did not?

A. No, I did not run all of them.

Q. You run about five lines, didn't you, and then protracted the balance?

A. I ran five lines and the balance were laid down by contraction.

Q. Did you find any anciently marked trees on that survey, as far as you ran?

1790 A. I found a white oak tree at the end of the first line, which had old marks upon it.

Q. Did they appear to be line marks?

A. Yes sir, they did.

Q. That is not at the corner?

A. Not at the beginning corner.

Q. Is it at the end of the first line?

A. At the end of the first line, and also at the end of the 7th line.

Q. It is in the continuous straight line made by the second and seventh line, is it not?

A. I do not know whether that is a continuous straight line; they are separate lines.

Q. Well, the beginning, as you have it, is at point H?

A. It is, yes sir.

Q. That stands inside the boundaries some distance, does it not?

A. Yes sir, it does.

Q. Now, where is this oak that you found?

A. It is at the end of the first line, the line running from H, No. 1, in black.

Q. Did you block the tree?

A. I did not.

Q. You do not know whether the block corresponds with the original survey or not?

A. I cannot say definitely as to that, the marks are old.

Q. Is that the only object you found, the only tree you found?

A. That is the only tree I found.

Q. Does that survey call for any natural objects?

A. Not on the remaining lines.

1791 Q. Does it on the lines you run, I mean the original grant?

A. I will have to look at the original warrant, the certified copy. The original grant calls to begin at a bounded white oak standing near a spring at the head of a hill descending into the west side of Buffalo Run, about four miles above the mouth of said run, and to run south 30 degrees east 40 perches; it calls for no timber at the end of the first line.

Q. There is no whiteoak called for at the end of the first line shown?

A. No, there is not.

Q. You spoke of running out a tract called Ashby's Cove and you produced a block out of the cherry tree. In running around that land did you find any other trees, or monuments indicating that they were the original marks or monuments of the survey?

A. The Maryland tract designated as Ashby's Cove calls to begin at two bounder cherry trees standing about three perches from the north side of Snowy Glade Creek, and running thence north 286 perches and does not call for any other timber beyond the cherry trees called for in the beginning; I found no other marked trees at the end of the several lines.

Q. Do you mean to convey the impression that the original surveyor didn't mark any trees except the beginning point?

A. They are very seldom found in old Maryland surveys, anything except the beginning tree; there was none found in this case.

Q. Was it not the habit of old Maryland surveyors to mark the lines around the corners?

A. They very seldom marked the lines. We do sometimes find the corners marked, but there are very few side lines and center lines in the old surveys.

1792 Q. Was there no law or rule of marking lines and corners on those old surveys in those days?

Plaintiff objects.

A. Not that I ever heard of.

Q. What does your experience teach you as to what the practice was?

A. The practice was marking the original corner with from three to 12 marks.

Q. What do you mean by from three to 12 marks?

A. I mean that sometimes the trees found at the corner would be marked with three hacks, marks one above the other, about six inches apart, sometimes they would be found with six marks, sometimes with nine, and at other times with twelve. It is not often I ever saw as many as 12 marks on the tree, and in cases where the trees were numbered, the custom was to remove the bark on a certain section and cut the number in the *good*.

Q. In case the tree was marked with 12 marks, how were they distributed?

A. There would be three on each side; I mean four sides, three on the north, three on the east and three on the south and three on the west; that is in case of a single tree. Where more than one tree was called for there were not so many marks on one tree, the marks on the two trees were marked on the sides adjacent.

Q. In case there were nine marks, how would they be distributed?

A. The center one would usually be opposite or adjacent to the other tree that was called for, or the direction in which the first line ran or some other object called for.

Q. Was there no uniform rule or method or practice of marking beginning trees or a survey in the old days?

1793 A. Why, I think the surveyors did then as they do now, marked differently, each surveyor.

Q. Is there any rule in Maryland now about that?

A. None followed, none in Garrett County followed by surveyors universally.

Q. How can you tell then, when you see a tree marked, that it was intended for the beginning tree if it had three marks on it, would you know it was a beginning tree?

A. That would depend on some natural call to govern the location.

Q. This cherry tree that you blocked as the beginning corner of Ashby's Cove, you did not state that it was shown to you by Samuel De Berry and William Ashby?

A. It was not shown to me; they told me of the location of the tract; they had lost information as to the exact point of beginning.

Q. What did they tell you as to the location of the tract?

A. They told me it lay on Snowy Creek, a level piece of land, comparatively smooth land where it lies.

Q. Did he claim any title under it—did they?

A. Not that I remember now, although Mr. Ashby was a descendant——

Q. Who owns that Ashby Cove land, who owns the land upon which you located the Ashby Cove, now?

A. I do not know who owns it.

Q. Who owned it in 1897?

A. I do not know that.

Q. Were there any houses on it?

A. To the best of my recollection there were houses on it.

Q. Do you remember who lived in them?

A. They were tenant houses, in connection with Anderson's Coal Mines, Corinth, the town of Corinth was on the tract Ashby Cove.

1794 Q. The town of Corinth stands on the tract Ashby's Cove?

A. Yes sir.

Q. Now, then, this block that you took from this cherry tree; how high was it from the ground?

A. To the best of my recollection, the upper mark was less than five feet from the ground.

Q. Wasn't the lower mark not over 18 inches from the ground?

A. I cannot remember that exactly; I can state the fact though that it was the custom to mark the old trees very low; I have taken measurements on certain bounded trees which still have the numbers on them where the highest mark is not over three feet and three quarters above the ground. The old custom in Maryland was to mark very low on the old surveys.

Q. Did I understand you to say that there was another old cherry tree there?

A. That was the only tree which was found marked; there were other trees there.

Q. Old trees?

A. I think, to my recollection, as old as the two marked.

Q. Did you not state in your examination in chief you began at two old cherry trees?

A. I know that there were a number of cherry trees there; I did, there were two trees there.

Q. Now, the other one, you found no marks on it, did you?

A. We found no marks on the other tree.

Q. What is the call as the beginning of the Ashby Cove tract?

A. It calls to begin at two bounded wild cherry trees standing about three perches north of Snowy Glade Creek.

Q. You were not able to give the annulations on this tree were you?

1795 A. No, we were not.

Q. On account of the decayed condition?

A. On account of the decayed condition inside.

Q. Is the cherry a long-lived tree?

A. Yes sir, it is.

Q. I believe you said that in locating the Hooker tract, you only ran one line.

Q. Only one line; we laid the rest down by protraction.

Q. You located also a Virginia patent to William Ashby surveyed March 21, 1785, for John Simpson; how many acres in that tract, was it a four hundred acre tract?

A. Three hundred acres.

Q. How many lines of that tract did you run?

A. I ran four lines.

Q. Did you find any marked trees or monuments on that survey?

A. At the end of the first line there was a marked chestnut tree, marked as a pointer with three hacks.

Q. Did you block it?

A. I didn't.

Q. Were those marks ancient or otherwise?
A. I do not remember definitely in regard to those marks.
Q. Do you remember the number of marks?
A. To the best of my recollection there were three marks on one side, I am not certain about that; I made no note of it.
Q. What did you begin at in running that three hundred acre tract?
A. I began at a stone shown me by Parker Ashby.
Q. What kind of a stone?
A. The fact was that the stone at the time, the stone was under water; the water was high; we set our compass on the bank;
1796 we saw the stone, the water is quite deep there.
Q. And you set your compass in line with the stone?
A. In line with the stone, yes.
Q. Now, does the patent call to begin at the stone?
A. At a cherry tree, and this stone was shown me at the point where the cherry tree stood, that was the testimony of Parker Ashby.
Q. The cherry tree had not stood in the River?
A. The River had encroached on the cherry tree and washed it away by the roots.
Q. Parker Ashby was the same man who was examined as a witness on this case the other day?
A. Yes sir.
Q. In speaking of points on the old line, which you noted, you mentioned a white oak tree on Stahl's Hill at the point marked W. F. on the map, as having been pointed out to you by Julius K. Monroe as standing in the old line; what kind of a tree was that?
A. It was a white oak to the best of my recollection?
Q. Sir?
A. A white oak.
Q. Was it a large or small tree?
A. Medium size.
Q. Was it marked in any way?
A. It was marked.
Q. How?
A. It was marked as a corner tree; I cannot describe exactly how the marks were on the tree.
Q. As a corner tree?
A. My recollection is that it was marked as a corner tree.
Q. What did it appear to be the corner of?
1797 A. Of a land survey.
Q. Do you know of what survey?
A. I know what Mr. Monroe told me at the time?
Q. What?
A. He said it was a corner of a tract called Eelshine, and in the old line.
Q. Did Mr. Monroe tell you how he knew it was in the old line?
A. I do not remember that he did say how he knew it; he had surveyed through there, familiar with the character of the tracts.
Q. You spoke of a thorn stump pointed out by Francis Martin; where is that stump?

A. It is on the Eglon County road, not very far north of the Northwestern Turnpike.

Q. Marked in any way?

A. No, it was a stump, the tree had been cut down.

Q. Was it in any fence?

A. No, it was not.

Q. Any of it?

A. No, it had grown up in thorn bushes, a young growth of timber, it was quite—had been quite a large tree.

Q. It was a corner tree, or a line tree, or did it simply stand in the line?

A. Said it stood in the line.

Q. What line?

A. He did not say what line, he said the old line; he said it had been a forked tree and the line ran through between the forks of the tree.

Q. I noticed several times in your testimony that you have stated that you drew a distinction between the old line and the
1798 Deakins line. Do you mean to convey the impression that there were two lines run, one by Deakins and one by somebody else?

A. The only testimony which I had in regard to any line run under the direction or by Deakins, was testimony in regard to a line run across the spring in the town of Cranesville, which has been testified to by witnesses. This old line were points which were so designated did not correspond at all with each other, and seemed to have no direct line with each other. I think that inhabitants in many cases have gotten the idea of a line confused with the line of some land grants which has been run and patented by authority of Virginia or Maryland, as the case may be, and that in many cases the old line pointed out to me was nothing more than the boundary of some land tract.

Q. That is your theory is it?

A. That is my belief.

Q. That is your theory, isn't it?

A. Yes it is. The measure of proof, though is in one case the old line was pointed out to me a certain tree as being in the line, and the tree being blocked, not being anything like old enough to be in any original lines; it was a white oak tree in which I mentioned as having counted the rings forty years old.

Q. That would prove what?

A. That would go to prove that it were not marked anciently, but a more recent date, of some land survey.

Q. Wouldn't it prove, that it did not stand on the line, the old line, if there was one, would it?

A. It would not. It would prove it was not the original tree, or anything as far back.

Q. Did the witnesses tell you that that was the original tree?

A. No, they did not say it was the original tree.

1799 Q. The point you speak of as pointed out to you in the Deakins line is the spring that was pointed out by our friend, the grubber, Mr. Lewis, in the town of Cranesville?

A. It is, yes.

Q. Now, is there not another spring about in that locality considerably east of that point, known as the Boiling Spring?

Objection by plaintiff.

A. I do not know anything of a boiling spring.

Q. Wasn't there a large spring some distance east of this that Lewis talked about in Cranesville, about the old line as claimed by the people along there?

A. I have not seen any spring there.

Q. Well, there is such a spring; have you never heard of it?

A. I have never heard of that as the Boiling Spring; I have never heard of any spring other than those that break out all along this glady country there; I never heard of a particular spring or large spring, had none pointed out to me other than the ones shown by witnesses.

Q. Did you never hear the testimony of Lewis and Thomas Browning, that there was a line run as the Deakins line?

A. That there was a line run at that point by Deakins, a northerly line, a line running north from that spring.

Q. What do you suppose Deakins was running a line through there for?

A. I have no information in regard to it.

Q. He was not running out Military Lots, was he?

A. No, not there.

Q. How far east of that are the Military Lots?

A. From a half mile to three quarters of a mile east.

1800 Q. So that he was not engaged in the commission that he was directed by the Governor and Counsel of the State of Maryland to perform, if he was running a line through the spring at that time?

A. He was not laying off the lots, certainly, at that point.

Q. And he was not running a true north line from the Fairfax stone through that spring?

A. I do not know what he was doing, other than he run a line across the spring in a northerly direction, according to the testimony of the witnesses.

Q. Will you turn to the description of Military Lot No. 1101 and give it to us?

A. Beginning at a bounded maple marked 1100 standing one mile north from a stone fixed by Lord Fairfax for the head of the north branch of the Powtomack River, and running north 89 1/2 perches; east 89 1/2 perches; south 89 1/2 perches; then to the beginning, containing 50 acres.

Q. Did you locate that lot?

A. I did not.

Q. Did you see it located?

A. Not on this survey.

Q. Have you ever seen it located?

A. I have seen some of the lots located.

Q. What distance are they from the Fairfax Stone?

A. In the neighborhood of a mile.

Q. Is that one of the westernmost lots laid out?
A. None west of it.
Q. What is the most southern lot?
A. It is the most southern so far as—well, it is.
Q. It is the lot then in the southwestern corner of the Military Lots?
A. Yes sir.
Q. The first lot you strike going north from the Fairfax stone?
A. Yes.
Q. How do the western lines of that lot correspond with what you call the Fairfax Meridian?

Objected to by plaintiff as immaterial.

A. That is, you want to know the distance?
A. Yes, how close it is to the Meridian?
A. It is 85 feet.
Q. East?
A. East of the Meridian.
Q. In your experience as a surveyor in Garrett County, Maryland, what do you find as to whether the soldiers, to whom the Military Lots were allotted, actually took possession of them, or conveyed them away, or whether they allowed them to lapse and escheat to the State?
A. The great majority of them were allowed to lapse.
Q. Then what became of the land?
A. The land escheated to the State and it was repatented to subsequent applicants.
Q. There has been no special effort, or reason for maintaining the evidence of the exact location of those military lots, is there? As a general rule, I mean, inasmuch as those lots have largely escheated and the land been taken up by subsequent surveys and patents; has there been much reason for preserving the location upon the ground of the old lots?
A. The fact of their having escheated to the State made no difference and it has been most important to preserve those old land marks, because the great majority of the land now lying in
1802 Garrett County hangs directly on these old lot surveys.
Q. Has there not been found to be great confusion in ascertaining the location of those old lots?
A. In some cases there has.
Q. Has it not been a cause of great litigation in the County, and contention in the Courts?
A. Well, that occurs more from the fact that when the lots were originally laid out, the system which was actually followed was to run north and south, or east and west, as the case might be, as a base, and then from the first tier of lots a second and third and fourth was run. Then they would go to a point a mile or two miles distant and run another base line and lay off to the east and west, and the result was one tier lapped and clashed upon the other. That has been one of the sources of litigation. The fact was they actually run off very few Military Lots; they took a base.

Q. Have you prepared a report and map of the surveying done by you in this case?

A. I have finished the map a few of the details in the report which will be made up from what is produced upon the map.

Q. You have completed the report, except a few details, as I understand you?

A. Yes sir.

Q. In that report do you give any subdivisions of any tracts located by you, besides those of Diadem?

A. Subdivisions of a tract patented by the State of Maryland, known as Elder Spring.

Q. Will you let me see that part of your report? I notice in your report that you speak of having located subdivision now in possession of Martha J. Falkner. By what is that subdivision indicated on the map?

1803 A. It is located in the southern portion of Elder Spring and is indicated by the letters E. A. and is that portion of the tract within the lines numbered one, 16, 15, the light black lines to the west and north.

Q. I notice that you profess to give here the chain of title to Martha J. Faulkner to this piece of land. Where did you get the information from that this chain of title is based upon?

A. That chain of title? It was furnished by the counsel for the State of Maryland.

Q. What reason was there for incorporating that chain of title into the report of your survey?

A. It is customary in Maryland for the surveyor to have the papers giving the chain of title, and to incorporate them in the running of his survey.

Q. Does the surveyor in the State of Maryland make out the chain of title for the parties and run it?

A. In most cases he testifies that he has surveyed the calls in each of the transfers.

Q. Does he report that he surveyed it, or does he tell what he did survey and leave it to the court and jury to decide whether it is the land called for in the deed?

A. If there is a difference in the calls, or in the land designated by deeds, he is supposed to locate the tracts where the difference occurs; if they are all exactly similar, it would be implied, I inferred, of course, that the surveys would be identical in the case.

Q. Well, did you locate the deed from John Hoye to William Hoye, dated September 1, 1834, mentioned in this abstract, did you locate that deed?

1804 A. My recollection was that the calls of that deed are identical with the original calls of the patent of Elder Spring, and I did locate the tract Elder Spring, according to its original calls, and by implication I located that deed.

Q. You didn't assume to pass upon the validity of this title you set forth in your report, did you?

A. I did not.

Q. Why did you report then that it was derived by Martha J. Faulkner by those conveyances, how do you know it was?

A. From the papers which are cited, from the chain of title.

Q. Mr. Brown, was it not aside entirely of a surveyor's duty to assume to give the title to the tracts of land with the surveys?

A. I have to do it constantly; I have to know the title to know how to locate a tract on the ground, because our tracts are so constantly in conflict if you do not know which is the elder tracts you need not go out.

Q. Does the surveyor undertake to decide who has got the elder tract?

A. I do in a land survey, that is, on the face of the papers. I *dod mpt* refer to a suit where there is a conflict in law, but as to the chain of title and the correctness of the title, I do.

Q. Now, you have also located a subdivision which you report to be owned in fee and in possession of Edward Jon[illegible]how is that designated on the map?

A. That is designated by letters E. D. That is indicated by the black letters E. D., the north part of the tract called Elder Spring.

Q. Then you have also located a subdivision on which you report, now owned in fee and in possession of Marshall Friend; how is that indicated on the map?

1805 A. That is indicated by the black letters E. C., the northern end of the tract.

Q. Now, what does the letters E. D. indicate?

A. Why, that was a tract owned by Mr. Bittner.

Q. Which Bittner, Jeremiah?

A. Yes.

Q. Now, E. E., what does that indicate or designate?

A. That indicates a portion of the elder Spring, owned by Spills.

Q. What Spills?

A. The Spills heirs.

Q. Now, you have not incorporated into your report the subdivisions of any of the other tracts which you laid down, except the Diadem and the elder Spring?

A. No, I have not.

Q. You did not contemplate doing so, do you?

A. Not so far as I have been instructed by counsel.

Q. Did you run out the subdivisions of any other tracts?

A. No, I did not.

Q. Your report and map have been prepared without consultation with Mr. Monroe, the surveyor representing the State of West Virginia, who accompanied you on the survey, have they not?

A. We consulted as to the scale of the map, Mr. Monroe at first wanting a smaller scale then it would be necessary to show the lines which the State of Maryland wishes to put upon the map.

Q. But as to the matter upon the map, you have made that without conferring with him; he has taken no part in the preparation of the map?

A. I put upon the map what work I had done under the direction for the counsel for the State of Maryland; I put nothing else

1806 upon the map.

Q. I understand that, but my question is whether Mr.

Monroe was consulted or had anything to do with the making of that map?

A. He did not, not with the making of that particular map.

Q. And that is true, also, as to the report which you have prepared, so far as it is prepared?

A. Yes sir.

Q. He has not been asked to assist or confer with you in the preparation of that report?

A. Not in the report.

Q. Was it your expectation to submit this map and report to Mr. Monroe for his examination or suggestion before you returned it to Court, or did you expect to return it on your own responsibility?

A. Not on my own responsibility at all; the map was prepared under the direction of the counsel for the State of Maryland and what ever they see fit to do would be done in the matter.

Q. Wasn't you aware that the agreement between counsel was that the two surveyors should confer and agree on the maps *and agree on the maps* and reports, and if they could not agree, make separate maps and reports; were you aware that was the agreement between counsel?

A. Well, I understood, without any personal misunderstanding, that he wanted a smaller scale, and I was satisfied that would not answer for our work at all, and it was necessary for me to work upon the map and report, and therefore I had nothing left to do but to go ahead with the scale I saw fit to adopt for the State of Maryland.

Q. Did you understand Mr. Monroe was making an issue with you on the scale of the map, would not agree to your map because you adopted a different scale from what he thought was proper; do you want to convey that impression?

1807 A. That was my understanding, that the confession which you mention in regard to the maps virtually gave permission to the other State to prepare such maps as they thought was best to present their case, and when I did confer with Mr. Monroe as we had differed on the scale and I had no notes or knowledge of the different work he had done on the part of West Virginia, I had no means of putting his work upon the map. Therefore there was nothing left for me to do but to make a map myself. I might state that the volume of work which is covered by this case would make one map almost impossible to comprehend or understand.

That is all.

For Plaintiff:

Q. We understood you to say in answer to the question on cross examination that when you ran from the Fairfax Stone north to Back Bone Mountain that you missed the Michler monument at that point about 20 feet. Please state whether or not we are to understand that no correction was made in that time line at that point?

A. The line of which you speak was merely ran as a trial line, and more to practice the men for the work to follow, etc., than to mark any points on that meridian.

Q. Did you never retrace the Michler Meridian from the Fairfax

Stone to the Michler Monument on the summit of Back Bone Mountain?

A. We did mark several points in the true Fairfax Meridian. The Fairfax Meridian was run and the work of prolonging it to the Mason and Dixon Line was done by Dr. Bauer. This provisional line that was run was not marked in any way upon the ground.

Q. Then as I understand, the line which was ran and which missed the Michler monument about 20 feet, as you have said, was simply a preliminary and provisional line and was not the
1808 final location or retracing of the Meridian, is that correct?

A. It had nothing to do with the Fairfax Meridian as finally established.

Q. We understood you also to say on cross-examination that in locating the Meridian, that is the intermediate lines, between the fixed points in the Meridian, with the transit, and an error should be made that there would be no means or method of correcting that error, but that the error would continue until the line was completed; do you mean to convey the impression that a meridian line in which an error of that character might arise would be wrongly located upon the ground and no means of detecting the error at hand?

A. It is very easy to detect any error by astronomical observations, and also by reference and check to the points which had thus been determined astronomically.

Q. Then as I understand you, if an error did arise in running the line between the two points in Meridian previously determined that such an error would be discovered at least by the time you reached the next point north in the Meridian, is that correct?

A. Yes. The error was in many cases very slight; in one case we ran a distance nearly four and one half miles between points established in the Potomac Meridian, and we were two-tenths of a foot out of the true position. It was easily corrected and the stakes put in the true Meridian upon the ground.

Q. Then, do we understand you to say that no such error did arise and continue to the end of the Meridian Line, but would be checked up at the next point?

A. The Potomac Meridian was run by Dr. Bauer from astronomical observations and prolonged by him to a point a short distance south of the Mason & Dixon Line, marking Robinson's Hill,
1809 and the line as run by me with the transit upon the ground was merely connecting the principal station established in the true Meridian and by Dr. Bauer, the method used being the most accurate method which was available in such a country as we had to traverse.

Q. You have stated that in locating the subdivisions of Diadem, some of the lines of the deeds thus located extended beyond the outside lines of that tract, and that some do not appear upon the plat. Please state how it was possible to locate the various subdivisions of the tract, as you have done, when all the lines of the different deeds were not run out by actual survey, and why you did not definitely give all the lines of the various deeds?

A. Many of the subdivisions had a common beginning and the

lines of one deed, run by its calls, were the reverse lines of another deed, and in locating one or more lines of the one tract, you also located lines of an adjoining tract. In this way, if the lines which have been mentioned as running beyond the lines of the Diadem deed crossed the original line of the Diadem, the point at which they crossed was easily located, I having previously run all the lines, except the given lines of the Diadem. I thus knew the points on the lines of the Diadem—knew the actual lines of the Diadem lying between the intersection. The object was to locate such portions of the several tracts as lay within the lines of the Diadem.

Q. My question was directed to the point why, on cross-examination you did not in reply to the question then propounded to you, give consecutively the lines of the various deeds, as located by you?

A. Because I did not have the full notes of the survey which had been made.

1810 Q. You have stated also that you made it a rule to pass upon titles to lands which you undertake to locate. Please state whether or not you did not intend to convey the impression that your passing upon the title was simply confined to the question of the true location?

A. It was, yes; that is what I intended by it, not as to the legal title, but as to the carrying out of the calls of the papers.

That is all.

Adjourned at 5:45 July 22, 1902, to meet the — day of — 1902.

PARKER ASHBY, called on the part of the State of Maryland, being first duly sworn, says:

Q. State your age, residence and occupation?

A. Well, I was born on the 23rd of October, 1841; that will make me a little over 60, won't it? My occupation is a little of everything, farmer partly, and working in lime rock some, that is a part of my occupation. My residence is in Garrett County, State of Maryland.

Q. Were you present on the survey in the case now pending between the State of Maryland and West Virginia, when Mr. McCulloh Brown made the locations on the part of the State of Maryland?

A. Was I with them?

Q. Were you present?

A. I was with them and showed them that stone, the corner of the 300 acre tract; I went down there and showed it to them.

Q. What stone do you refer to?

A. Why, the corner of the three hundred acre tract, which was taken up by William Ashby. My father owned, his deed

1811 called for 116 acres of that tract, east end of it.

Q. Do you know who granted the tract to William Ashby?

A. Why, Simpson, I think it was.

Q. Do you know from whom Simpson got the property?

A. Yes sir, my understanding about that is that Simpson got the warrant, I think, is the way it has been handed down to me, but maybe I do not understand what you mean.

Q. From what did he get it?

A. From the State of Virginia.

Q. Please look at the plat now shown you and state where the stone which you pointed out to Mr. Brown is designated on the plat and how it is designated?

A. Right there (indicating).

Q. What designates it?

A. Well, it is here, (indicating.) I have seen the plat, helped to run it different times; I have seen the plat of this whole tract before this; I know the point anyhow.

Q. How is that plat, point to the mark upon the plat, what letter?

A. P, here (indicating).

Q. What color is that letter P upon that plat?

A. Dark.

Q. Black?

A. Looks like that to me any way.

Q. Who pointed out that place to you?

A. Why, the first I ever knowed was my grandfather, and it was two red oak trees there on the bank of the Creek and they was marked as pointers and the corner was gone, washed away, and he said, they was pointed to where the corner stood.

Q. Do you know what the original corner was?

1812 A. Wild cherry.

Q. A wild cherry?

A. Yes sir.

Q. Did any one else besides your grandfather point out that place to you?

A. No, I do not know as they did in particular. I have heard different ones say you know, there was where the corner was and what it was, but I do not recollect who it was any more.

Q. At the time you heard people speak of it being the corner, were they on the ground?

A. No, they were not there. I have heard people talk about it in this ejectment suit, when it was up you know. I heard them talking about it then and I have heard them talk about it before.

Objection by Counsel of State of W. Va., as to the testimony of talk.

Q. Were you present upon any occasion when any one else pointed out that place as the beginning of the William Ashby three hundred acre tract?

A. No, I do not know as I was. It seemed to be an established——

Q. Is your grandfather living or dead?

A. Dead.

Q. Do you know Mr. Julius K. Monroe, the surveyor who ran the lines in this case for West Virginia in 1894?

A. I know him when I see him, I believe.

Q. Do you know where Mr. Monroe ran his line through the Ashby three hundred acre tract?

A. Yes sir, part of it. I was not present when he ran clear through it, but I seen him run from that.

Q. Which of the three hundred acre tract, east or west line did he run for the State of West Virginia in 1894?

1813 A. East of it on this corner in here, taken up under a Maryland warrant, I think, about 60 years ago, as well as I recollect.

Mr. PRICE—Cross-examination:

Q. Which corner?

A. This here corner, of this here tract here, below this line (indicating).

Q. Mr. Ashby, which corner were you speaking of that was taken under the Maryland patent?

A. Why, this corner P, right in here; you see here is where Mr. Monroe's location was.

Q. That broken line is where Mr. Monroe's location was?

A. Yes sir.

Q. The part taken up by the Maryland patent, was it east of the Monroe line?

A. Yes sir.

Q. Did it come up to the Monroe line?

A. Yes sir; I suppose it went up to it; they claimed, you know, that they run up to this line.

Q. Where do you live, Mr. Ashby?

A. Garrett County, Maryland.

Q. Whereabuts?

A. About five miles west of here.

Q. Where do you live with reference to that three hundred acre Ashby tract?

A. I live right in this corner (indicating).

Q. That is east of the Monroe line?

A. Yes sir, and about, well, something like 150 or 200 yards from that corner.

Q. From which corner, Marked P?

1814 A. Yes sir.

Q. West corner, it would be?

A. It would be a little north, more north than west. This here line here runs right up through my yard.

Q. The northern line?

A. Yes sir, this line, that was the beginning of it, and it run this way; it was located, I think, around this way. They began there and run this line and come on around and this here is the given line as I understand it.

Q. The first line of the survey, running from the corner at P, runs through your house?

A. Through the yard.

Q. Through the yard?

A. Yes sir.

Q. Now, where did you get that title from, Mr. Ashby?

A. I do not own this.

Q. Oh, you rent it?

A. Well, I am living on it there. I do not rent it; it belongs to one of my brothers and the land on the other side is mine. You

see it all belonged to my father once. The tract on this side belonged to him and I own a part of it.

Q. Now, what is the name of the Maryland tract you live on?

A. I do not live on the Maryland tract; I own a part of the Maryland tract. I am living on this three hundred acre tract.

Q. But the part that you own belongs to a tract under the Maryland patent?

A. I do not own it; it is two of my brothers own it.

Q. I thought you said you owned the adjoining land?

A. On the other side.

1815 Q. I thought you owned, the part you own is called what?

A. Called Maryland, which is here, where I live, here where I live (indicating).

Q. That was taken up under a Maryland patent?

A. Yes sir.

Q. What is the name of that tract?

A. Nine, or Ninesburg.

Q. Mr. Ashby, is it not a fact that this tract called Maryland covers that portion of the Ashby three hundred acre tract that lies east of the Monroe line?

A. No sir.

Q. Eh?

A. No sir; I have got a copy of the patent at home and I could have brought it with me if I had knowed it was necessary for me to do it.

Q. Then it adjoins the three hundred acre Ashby tract?

A. Right in it, it is that corner there, 35 acres and three-quarters, or 34, I do not know which it is.

Q. You do not mean that the tract called Maryland has thirty odd acres in it?

A. The tract called Maryland has 131; *on,* no; this is a separate tract.

Q. That is a separate tract that has some thirty acres in it?

A. I think it is thirty-four, if I recollect right.

Q. That is the Ninesburg tract?

A. Yes sir.

I think that is all we want.

1816 Re-direct examination:

Q. Please state whether or not any of the William Ashby three hundred acre tract, west line which Mr. Monroe run, is held under Maryland title?

A. Yes sir, it is held under Maryland title now, up to Michler line, and last September, if I recollect right, I went over to Kingwood; they had sold this land for taxes, and I went over there thinking that there was a piece of twelve acres and a half that laid on the west side of the Michler Line that was deeded to one of my sisters and I thought that they had that in, too, and I thought that they were charging double taxes; so I went to the recording clerk to see him about it and he said I was mistaken; says he, That is all correct, says he, it is not paying double tax, and says he, the last assessment

that we assess, now, he says, every ten years, if I recollect right—that is land—and says he, our last assessment was in July, says he, and this here piece of land below, east of the Michler line was marked off the books.

Defendant objects to statement of witness as to what clerk said.

Q. What recording clerk do you refer to?
A. George Wolz, George, I think.
Q. Of what County is he the clerk?
A. Preston County, West Virginia.

That is all, gentlemen.

Mr. PRICE:

Q. He told you that at the last assessment in July of what year?
A. In 1901 it would be, it was last September I was there.
Q. He told you then that at the reassessment in 1901, they left it off?
1817 A. They marked that off the books.
Q. They marked off that part lying east of the Michler line?
A. Yes sir.
Q. Did he tell you that the land lying east of the Michler line had been assessed in West Virginia up to 1901?
A. No, he did not tell me anything about that.
Q. He told you they left it off?
A. They marked it off.
Q. He meant by that it had been on?

Objected to by Counsel for State of Maryland.

A. He did not say, of course; I knowed how that was myself.
Q. How was it?
A. Why, of course they had been collecting taxes before that, and so had Maryland.
Q. They had?
A. Yes sir, for several years.
Q. How long?
A. Well, I do not know just how many years.
Q. About how long?
A. I could not say.
Q. What is your best recollection?
A. I suppose four or five years.

That is all.

(WITNESS:) There was one thing more, of course; I was going to tell you about, and that is what the clerk said. I was over there, I think about four years ago and I had a plat of all this land, all this part of the three hundred acre tract that my father had, you know, and I showed it to Mr. Wolz and I told him they was paying taxes for it in Maryland, and says I, they have a title for it, and
1818 these were his words, says he, this ought to be transferred and then if West Virginia, in this boundary case, should gain the

day, it can be transferred back and if they *do* it, it is where it ought to be.

Q. You said that that part of the land lying between the Monroe line and the Michler line was held now under a Maryland title?

A. Yes sir.

Q. And the Maryland title covers it?

A. There is two of my brothers own it, have a deed for it.

Q. They have a deed for it?

A. Yes sir.

Q. What Maryland patent do they hold under?

A. I cannot tell you anything about the patent. Part of this here was, as I said, bought together, taken up a good many years ago under the Maryland patent.

Q. The Ninesburg tract?

A. Yes sir.

Q. But the Ninesburg tract does not run over as far as the Michler line?

A. No.

Further deponent saith not.

Signature waived.

JESSE J. ASHBY, JR., called on the part of the State of Maryland, being first duly sworn, deposes and says:

Q. State your age, residence and occupation?

A. I am fifty years old; I live in Garrett County, Mary-
1819 land; my occupation is farmer.

Q. Were you present at any time upon the survey in the case now pending between the State of Maryland and West Virginia, concerning the western boundary line of Maryland, while Mr. McCulloh Brown was making the locations for Maryland?

A. I went with Mr. Brown and Mr. Monroe there, one day, over to the corner.

Q. What corner?

A. Well, we went over to the south corner, was it not, Mr. Monroe?

Q. Of what tract, Mr. Ashby?

A. Of the Hooker tract.

Q. Please look at the plat now shown you and state, if you will, how the point which you went to with the surveyor is designated upon the plat?

A. Let me see where these lines come through. Well, it was a chestnut stump, an old chestnut stump.

Q. How was it marked upon the plat?

A. By black Q.

Q. Is the point black Q upon the plat east of the Michler line upon the ground?

A. Yes sir.

Q. How does it stand with reference to the Monroe line, that is, is it east or west of the Monroe line?

A. The Monroe line? I never saw the Monroe line run, only the people told me.

Q. I thought you had. Are you any relation to Mr. Parker Ashby, who just testified in this case?

A. Yes sir.

Q. What relation are you to him?

1820 A. We are cousins.

Q. Is his father living or dead?

A. Dead.

Q. How did you acquire your knowledge as to the point Q being a corner of the Hooker tract?

A. Now, I cannot answer that; I have run lines and run lines, and they had come there. As far as my knowledge goes, I cannot get at it, it was the beginning. I could not say who told me.

Q. Is or is not the point Q on the plat generally recognized as the beginning of the Hooker tract, in the territory where it lies?

Objected to by counsel for State of W. Va.

A. The beginning of the Hooker tract? I cannot say that; I cannot say whether it is or not.

Q. Is the point Q generally recognized as the corner of the Hooker tract?

Objected to.

A. Yes sir, it is the corner.

Q. You have stated that at the point Q on the ground there is an old chestnut stump?

A. Chestnut stump, yes sir.

Q. Is or is not that stump generally recognized as the corner to the Hooker tract?

Objected to.

A. It always was, it was always of a corner; I cannot say it is a beginning corner of the Hooker tract.

Q. How long have you known it as a corner of the Hooker tract?

A. I cannot say just how long; I have been raised there and I have always heard it is the corner.

Q. About how long, Mr. Ashby, according to your best recollection?

1821 A. Oh, well, now, I cannot say that, for I did not pay any attention to the lines for a good while; if I had some papers with me I might know about when I saw first the corner.

Q. Can not you say approximately when you first learned it as a corner; twenty years ago?

A. I expect.

That is all.

Mr. PRICE—Cross-examination:

Q. Where do you live, Mr. Ashby?

A. I live in Garrett County, Maryland.

Q. Do you live east or west of the Michler line?

A. I live east.

Q. How far east?

A. I would suppose a half mile, anyhow.

Q. Do you live near of on this Hooker land?
A. Yes, I do.
Q. Eh?
A. Live on it.
Q. What kind of a title have you got, Maryland or West Virginia title?
A. Well, sir, I had a West Virginia title, first title taken up as West Virginia title.
Q. Have you any Maryland title to the land you live on?
A. Yes sir, it is transferred; it is on the books here.
Q. Just taken and put on the books in Maryland?
A. I suppose.
Q. But there was no patent gotten out?
A. No resurvey patent that I know of.
Q. Do you know when the transfer was made?
1822 A. Indeed I don't.
Q. What is your understanding about that?
A. Well, now, sir, I cannot tell you when. You could find out at the Courthouse, but I cannot tell you when it was put on the books here.
Q. How far does your land run over towards the State line?
A. Which tract sir?
Q. The one you live on, how close does it go to the State line?
A. Oh, I couldn't just say how close it is.
Q. You do not know the line run by Mr. Monroe, do you know where it is, the line Mr. Monroe run?
A. I know about where it is; I did not see Mr. Monroe run it.
Q. You have understood where it runs?
A. Yes sir.
Q. Does your land extend west of that line?
Q. Where Mr. Monroe run?
A. Yes sir.
A. No sir.

That is all.

Redirect examination:

Q. Have you any land under a Maryland title west of where Mr. Monroe run?
A. Yes sir, but not this tract. You must not question me on two tracts at once. Did you say west?
Q. Yes sir?
A. No, not west of where he run, not where he run with the State line, no sir. You must not get the tracts mixed.
Q. Have you any tract of land, under a Maryland title, which joins up to the Michler line?
1823 A. Yes sir—that joins up to the Michler line?
Q. Yes sir?
A. No sir, laine joins up to the Monroe line; that used to be called Deakins' line.

Mr. PRICE:

Q. Which one of the lines does your land join on?
A. The last tract on the Monroe line.
A. Is that the old Deakins line?
A. Deakin? Yes sir, I think that is it, Francis Deakin was the man who run the line.

Counsel — State of Maryland object to last question and answer.

Plaintiff's interrogatories resumed:

Q. Have you a tract of land under a Maryland title called Jesse?
A. Well, sir, I do not know what they call it now. I got a warrant for a piece of land and then I did not get it by the warrant, and I bought the land of Mr. Hoye and I don't know what they called the land when I got it then.
Q. Does that land join up to the Michler line?
A. To the Michler line?
Q. Yes sir.
A. No sir.
Q. It does not?
A. No sir.
Q. Is there any land under a Maryland title which lays west of the land you bought of Mr. Hoye?

Objected to by Counsel for State of W. Va.

Q. Now, let me talk one minute and not put it down, please. Mr. Offut has a tract in dispute, him and Mr. Miller; I do not know who the title is in. Does Mr. Offut claim that land under a Maryland or Virginia title?

1824 Objected to by Counsel for State of W. Va.

A. I suppose under a Maryland title.

That is all.
Further deponent saith not.
Signature waived.

JOHN HARNED, called on the part of the State of Maryland, being first duly sworn, says:

Direct examination:

Q. What is your age, residence and occupation?
A. My age is 76; my residence is near Hutton, in Garrett County. I am supposed to be a farmer now; I have been surveyor.
Q. Did you or not participate in the survey made by Mr. Monroe in 1894 for the purpose of locating the western boundary line of the State of Maryland in this case?
A. Yes sir, I did.
Q. In what character did you participate?
A. Well, as a Maryland surveyor.
Q. From what beginning point was that survey started?
A. From Fairfax Stone is where we started.

Q. Who pointed out the location of the Fairfax Stone to the surveyor?

A. George Mosser; but I think there was another, but Mosser pointed it out.

Q. How was that line run, by what instrument or instruments?

A. County surveyor's compass.

Q. Not run by transit?

A. No sir.

Q. What, if anything, was allowed for variation of the
1825 compass, can you remember that?

A. Three degrees and forty minutes is what I have it.

Q. How was that variation established or that allowance arrived at?

A. It was presumed that was near about what would be required, I believe.

Q. It was simply arbitrarily taken then?

A. Yes sir, as far as I know, as far as I saw.

Q. What was the intent and design, Mr. Harned, as far as disclosed at the time to retrace or reproduce any of the previous lines by this survey?

A. Well, I cannot say exactly; my impression was to follow the old lines as near as possible.

Q. What old line do you mean, has it any distinctive name?

A. The first original.

Q. Is it commonly known by any common name?

A. Well, I do not remember—called the Deakins Line.

Q. In the course of the survey made by Mr. Monroe, does the line strike any of the monuments established by the Deakins Line?

A. No monuments that I remember of. There were marked trees along by, and along and nearby.

Q. Were any of those marked trees in the direct line of the Monroe line?

A. For a short distance; then we varied to the left of the marked boundary.

Q. The marked boundaries of what line?

A. Well, I suppose they were Military Lots?

Q. Do you know when the Deakins Line was originally run?

A. I do not remember. I ought to remember, I have seen
1826 it often enough, but I cannot recall it to mind now.

Q. How did the Monroe line correspond with the Michler line?

A. It varied to the right.

Q. Varied to the right going north or coming south?

A. Going north.

Q. What was the extent of the variance, was it uniform or not?

A. Well, pretty nearly so, I believe.

Q. How much did it vary from the Michler line?

A. I cannot tell. By referring to a rough plat I have, running two miles and a half, beyond that some, to the first monument, we were twelve rods and seven-tenths to the right of the monument, the Michler monument. Next is a post on the Michler line on Stahls

Hill, between nine and one-half miles—nine and three-fourths; we were thirty-nine rods and nine-tenths there.

Q. Still to the left?

A. Still varying to the right of the Michler line. Then at the summit of Lower's hill, a distance of nearly twelve miles, we were forty-seven rods and three-tenths from the stone pile.

Q. What was that stone pile?

A. It was on the Mich-er line.

Q. Varying still to the right?

A. Yes sir, all the time through. This next point is a monument on the B. & O. Railroad near Hutton; that was on the Mich-er line, fifty seven rods and seven-tenths from our running and Mr. Monroe's.

Q. Any further variations marked on that plat, and if so, state them, up to the Mason and Dixon Line?

A. Yes sir; at the end of twenty miles the monument was seventy rods west of the Monroe line, to the monument on Michler line. The next monument under the Michler line was eighty-one and fifteen-hundredths.

1827 Mr. PRICE:

Q. What distance was that from Fairfax Stone?

A. Between twenty-six and twenty-seven miles. I never finished out this plat. Well, at the Mason and Dixon Line, at the point Mr. Monroe struck the line, is 87 7/10 east of the monument on the Michler Line and 151 6/10 rods from the monument of the old line.

Direct examination resumed:

Q. From the monument of what was called the Deakin's line?

A. Yes sir; it is recently put up, the monument. It is not many years ago it was lettered.

Q. It had been put up, however, before the Monroe line was run.

A. Yes sir, oh, yes sir.

Q. Do you know by whom it was put up?

A. No sir. Put up in 1885, was marked on the monument.

Q. What else is marked on the monument except that?

A. On the west side Pennsylvania, and West Virginia, north side Pennsylvania, and then on the east side Maryland and Pensylvania, West Virginia and Maryland, south, West Virginia and Maryland.

Q. Was there or not anything upon that monument to indicate by whom, or by what authority it was erected?

A. I did not notice that there was.

Q. Was there any other monument, stone or mark, in the neighborhood, the termination of the Monroe line, at the Mason and Dixon Line, except the monument you have referred to?

A. No.

Q. To indicate the termination of what has been called the Deakin's Line?

A. I didn't see anything else, only at the place where the monument was erected; that was at the end of the Michler line, at
1828 the Mason and Dixon Line.

Q. Do you know in what year the Michler line was run?

A. I think it was about 1857, I would not be sure, though.

Q. These various trees you have mentioned at or near and along by or a little distance off the Monroe line were they supposed to be marks or marked trees for the Deakins Line, were they or were they not?

A. I suppose they were; that is the marked trees, at the time, I suppose, the Military Lots were laid off.

Q. Were they in a direct Meridian line, or did they vary, as far as your observation went?

A. I think that they were pretty nearly on a straight line, yet they varied a little from the line Mr. Monroe run, still further to the right.

The witness is with you.

Mr. PRICE—Cross-examination:

Q. Mr. Harned, I understood you that Mr. Monroe ran a line through there on a variation of three degrees and forty minutes, clear through from the Fairfax Stone to the Pennsylvania Line?

A. That is as far as I know anything about. That was my idea. If there was any change made I did not know it.

Q. Now, you accompanied Mr. Monroe on that survey as the representative of the State of Maryland?

A. Yes sir.

Q. And you conferred with Mr. Monroe from time to time with what he was doing; he permitted you to copy his notes from his book, didn't he?

A. I could, but I took them still along myself.

Q. You took notes yourself?

A. There was but very little I copied.

1829 Q. Any change that he made at all was reported to you was it not; you got information of everything he did?

A. As far as I know.

Q. Did you have any reason to doubt he would keep you informed?

A. No.

Q. Didn't Mr. Monroe on more than one occasion let you have his note-book so that you could copy out of it anything you wanted?

A. Yes sir; I was copying some general surveys, copies of courses and distances, is what I got it for.

Q. This line that was run by Mr. Monroe was run as a reference line, was it not, the distance being taken between it and the Deakins line and the Michler line all along its points?

A. Yes sir, between the Deakins line and Mr. Monroe's line.

Q. And also with the Michler line, too, was it not?

A. Well, they had nothing to go by except the adjoining lands.

Q. How did you get the measurements you have given between the Monroe line and the Michler line between different points?

A. Measured across.

Q. That was done by Mr. Monroe on this survey?

A. Yes sir.

Q. You got the benefit of it, did you not?

A. Certainly.

Q. So that Mr. Monroe on this survey did take the measurements between his line and the Michler line at those points?

A. Yes sir.

Q. And also at various points between his line and the Deakin Line, did he not?

A. Well, the only way I saw they could get it there was by running full lines of the survey that called for the Deakins Line.

1830 Q. Now, is it not a fact that Mr. Monroe was running there from time to time as he went along, various patent lines, and property lines, calling for the Deakins Line, so as to establish the points along the Deakin Line?

A. Yes sir, frequently.

Q. Did you take full field notes of that survey made by Mr. Monroe?

A. Not all these surveys that he undertook to locate.

Q. Not property lines?

A. No.

Q. But you took notes of the running of the main line there?

A. Yes sir.

Q. And the measurements between the different points?

A. Yes sir.

Q. Didn't you copy, from time to time, the surveying of the tracts of land as you went along?

A. Oh, I guess we did.

Q. Didn't Mr. Monroe report to you, every one of the lines that he ran?

A. I do not know, I did not take any account of them at any rate, that is, make any notes of them all through, a lot of it.

Q. You did not take them; why not?

A. Well, I was not authorized to do it. Mr. Poe was along and I asked him frequently and he did not direct me to do it. He was a young man, Johnson Poe, I believe it was.

Q. Mr. Johnson Poe was here representing the State of Maryland as attorney, was he not?

A. That is what I understood.

Q. Well, Mr. Monroe gave you opportunity to take note of all this surveying, and the reason you do not have it was you did

1831 not consider it important for Mr Poe didn't direct you to do it?

Q. No, I did not know they was going to make a survey of that kind, I thought it was merely to locate the lines; I guess I could have had all the notes he had taken if I had asked it.

Q. You have never prepared or made any formal report of that survey, have you Mr. Harned?

A. No, I was waiting until you get ready. I conferred several times with Mr. Monroe about it, and it was postponed until further work.

Q. Was it understood between you and Mr. Monroe when all was completed you would be conferred with with reference to making up a report?

A. Yes sir.

Q. You are expecting that still, are you?
A. It must be.
Q. You are prepared to confer with Mr. Monroe, if you can agree on a report as to that survey, you will do so; if not, you are prepared to make an independent report, is that correct?
A. Yes sir, that is the way I understand it.

That is all.
Further deponent saith not.
Signature waived.

JESSE ASHBY, recalled at his own request, says:

I want to correct an error I made. I came with Mr. Brown to this corner marked on the plat by black letter V. Then we went up some place along there is the chestnut stump (indicating), with marks on it as a corner, and then run down here some place this way.

1832 Q. What direction is that?
A. North. Then I left them.
Q. Then as I understand you, the point V the point marked black letter V is the point you pointed out to Mr. Brown in place of the point marked black letter Q?
Q. The west corner there, Q, I was not to; the weather got bad and I didn't come back. I thought you were asking me on this corner; there is a corner there where it joins the Ashby farm tracts between V and Q and it is a chestnut stump with tomahawk marks on it.
Q. Corner of what?
A. Corner of our place and the Moon place, and it is also a corner of this here tract I bought of the Hoys.
Q. Then that was not a corner of the original Hooker tract, but of some subdivision thereof, as I understand?
A. I would suppose so.
Q. Right near Julius Hooker's tract, is it not?
A. Yes sir. It was not up to Q. I supposed that Q was down there. That just represents the same kind of corner and stump, with hacks on around it.

That is all.

Mr. PRICE:

Q. You do not claim that the point where this chestnut stump stood is the original corner of the Hooker tract, do you?
A. That is what chestnut stump, at Q?
A. Between V and Q?
A. Oh, I could not say it is a corner of the Hooker tract at all; it is a corner of the Smith farm tract.
Q. Just simply a corner of the farms that adjoin there?
A. Yes sir, a corner of our farm.
1833 Q. It is a corner of the subdivisions of the Hooker tract?
A. Yes sir, I suppose. I supposed Q was there; you can see it represents the same condition and the same stump.

Q. Now, Mr. Brown ran from that stump where you showed him northward, I understood you to say?

A. Yes sir, northward.

Q. Did he not abandon that run and the next morning go to the place where Q is?

A. Yes sir, he abandoned that before and I do not know where he went after that, run down here some place and we quit.

Q. Did he not quit because he found that he was not on the original line of the Hooker tract?

A. I could not say, I do not know why he quit. I do not know what he quit for at all.

Q. Well, now, since you were examined awhile ago, you had a talk with Mr. Brown about this matter, hadn't you?

A. I was just talking about this corner; I went along the plat to see if this was the Deakins Line. This corner was up too far, that is why I said—this corner I represented at the chestnut stump was up too far.

Q. You told Mr. Brown that if the letter Q indicated the chestnut stump, then it was too far up?

A. Yes sir.

Q. That is, it was too close to the Deakins line?

A. Yes sir, if it was the chestnut stump I went to.

Q. The stump you showed him was how far from the Deakins Line?

A. I would suppose it was down here (indicating).

Q. Down about how far, on the ground?

A. Well, I think it is diagonally some rods, seventy rods.

1834 Q. Seventy some rods from the Deakins Line, east?

A. Rather east.

Q. In an east direction?

A. Yes, back on this bearing.

Q. Bearing from Q to V?

A. Yes sir, that is it, on that bearing.

Q. Mr. Brown put the letter V on this map since you were last examined?

A. Yes sir.

Q. In order that you could explain this map?

A. Yes sir.

That is all.

Further deponent saith not.

Signature waived.

THOMAS BROWNING, called on the part of the State of Maryland, being first duly sworn, deposes and says:

Direct examination:

Q. State your age, residence and occupation?

A. I was 85 the 5th day of last February. I live this side of Browning's Dam, this side of Cranesville, Garrett County, Maryland. I was a farmer when I worked at anything.

Q. Did you point out to Mr. Brown, the surveyor in this case, any

objects upon the ground, if so, please state what objects you so pointed out to him?

Objected to.

A. A stone in the meadow where they supposed was the beginning of a tract of land called Diadem.

Q. Did you point out any other object to Mr. Brown, the
1835 beginning of Diadem?

A. Yes, I pointed out a spring to him there, said to be on the Deakins Line, was it not, yes, the old Deakns line, I believe.

Q. Where is that spring located, Mr. Browning?

A. Right in the town of Cranesville.

Q. Where is that, where is the town of Cranesville, Mr. Browning?

A. It is in Preston County, West Virginia It has always been considered in Preston County.

Q. How did you come to know that the spring which you pointed out to Mr. Browning in the town of Cranesville was in the old Deakins Line?

A. The information comes to me in a case between William Elliott, Sheriff of Preston County, and John Summers, who claimed to be a resident of Maryland. Elliott had come and executed some of his property and took it over the line, the line that Summers claimed, and I believe sold it. Summers sued him for coming—he said he was in Maryland, you know, and Elliott claimed he was in Virginia, and he sued him for coming across the line when he had no authority.

Q. Where did Summers sue Elliott, before whom?

Objected to.

A. Before my father; my father lived on Sang Run, near Sang Run.

Q. What was your father at that time?

A. Justice of the Peace.

Q. What was his name?

A. Meshack Browning.

Q. Was he a justice of the Peace of the State of Maryland or State of West Virginia?

A. State of Maryland.

(Foregoing testimony as to suit before Meshack Browning is objected to as incompetent.)

1836 Q. Do you know what became of your father's dockets?

A. Yes sir; I know what become of them, it was returned to the office in Cumberland; since I do not know what become of it. I believe it was burned, wasn't the Courthouse burned there? I think all the old records were burned, I am not sure about that. I know he returned his docket to the Clerk's office in Cumberland. I do not know what become of it after that.

Q. Do you remember who was present at he trial of that case; if so, please detail all that you know concerning that matter?

A. Well, Summers——

Objected to.

(Witness continuing:) Willie Hoye, and Gabriel Friend, and John Friend. William Hoye was the surveyor and I think John Friend was the pilot or chain *ch*arrier.

Q. Of what survey was William Hoye the surveyor?

A. The division line between the two States.

Q. Do you mean that he was the surveyor at the time the Military Lots were laid out under the direction of Francis Deakins?

A. I have no knowledge of that, Mr. Sincell; all that I recollect was that he was the surveyor on that line under Deakins.

Q. The William Hoy*r* that you speak of was William W. Hoye was it not?

A. Yes sir.

Q. Do you remember what William W. Ho*ue*, Gabriel Friend and John Friend testified to at this trial, concerning the Deakins Line?

Objected to.

Q. Their testimony was that they came to that spring. I suppose then it was in the woods, I do not know, and they carried the chain right over the head of the spring, leaving the head of the
1837 spring in Virginia, just over the line, I recollect it distinctly. They all three testified to the same thing.

Objected to.

Q. Are those living or dead?

A. All three dead, all dead.

Q. How old were you at the time of that controversy between Elliott and Summers?

A. I cannot tell you how old I was because I took no account of it. I recollect the circumstances just as well as if it was last week.

Q. Were you grown or a boy?

A. I was not over 12 or 15 years old; I might have been 15.

Q. Please look at the plat now shown you and state, if you recollect, where said plat the beginning of Diadem is and the spring to which you have referred, how they are designated and marked?

A. Here (indicating).

Q. How is it marked on this plat, by what letter?

A. Black E, that must be about the spring right there (indicating).

Q. Just state how it is marked on the plat, the spring?

A. Marked Spring, with black circle to denote the spring.

Q. Are you acquainted with the country around about the Fairfax Stone and the waters of the North Branch of the Potomac River?

A. Not in the condition they are now, Mr. Sincell. I have not been there now several years. I suppose it is cleared out.

Q. When did you first go into that country?

A. When I was about 12 years old.

Q. Did you visit it frequently during your younger days?

A. Yes.

Q. For what purpose?

1838 A. Hunting and herding hogs.

Q. What was the character of the country in the days when you went there to hunt and herd hogs?

A. It was a dense wilderness.

Q. Were there any human habitations in that country at that time?

A. One where Lloyd Kitzmiller lived; I think they called it eight or nine miles up to what they called the Dobbin House, and there was one path they could ride a horse along.

Q. About how far was Lloyd Kitzmiller's place from the Fairfax Stone?

A. Well, it may have been—I do not know from the knowledge I have of the distance from Lloyd Kitzmiller's up to what they called Dobbin House, it must have been six or seven miles; that is only what I think it was, six or seven miles.

Q. Until how recently did that country retain its wild character?

A. Till the Railroad went up there, the West Virginia Central Railroad.

Q. Do you know when that road was built?

A. I could not give the date, Mr. Sincell, but I of course know the time it was built, I know very well when they was building it. It was approximately 1883 or 1885.

That is all.

Mr. PRICE—Cross-examination:

Q. Mr. Browning, how far do you live from Cranesville?

A. Not quite three miles, right this side of Cranesville on the road.

Q. How near do you live to the State line?

A. Well, the old Michler line is about a mile, that has been the lines recognized there by the two states, ran in 1859, was it not?

1839 Q. And how far from the Deakins Line?

A. That I cannot say, because that line has always been disputed there; some say it is this side of where the Deakins Line was and some say the other side.

Q. Do you own any land in there?

A. Not now, I did own, but not now.

Q. Where did the land lie that you owned in there?

A. It went to the Virginia line.

Q. To the Virginia line?

A. Yes sir; it was a survey that my father took up and he took up a part as a vacancy between the lots, Military Lots and the Virginia Line.

Q. How much land was in that piece that your father took up?

A. 400 acres.

Q. What was the name of it?

A. Scales.

Q. Scales?

A. Yes sir.

Q. When did he take it up?

A. I cannot answer that; I was young when he took it up; I cannot answer that question because I don't know the date.

Q. Didn't that patent call to run to the Virginia Line?

Objected to by counsel for the State of Maryland.

Q. I think that the course was to begin at a certain tree and run so many perches to the Virginia line, if I remember now it began at the corner of a rock then it was to run so many perches to the Virginia Line, including the vacancy.

Q. What was the width of that tract of land that lay between the Military Lots and the Virginia Line, do you remember what the distance called for?

1840 A. I don't, sir; I believe about 80 or 100 rods, I could not say though, positively, what the length of that line is.

Q. That was taken up long before the Michler line was run?

A. Oh, yes; yes sir, it has been taken up not less than—well, it was before I was married, I know that, that must be——

Q. Was it in 1829?

A. I cannot say, sir.

Q. About that?

A. I was just going to say it must have been some time in 1630.

Q. Now, didn't that call for four hundred and five acres and one-half?

A. I reckon it is, sir. Yes sir, there was a little ove[illegible] because there was a strip; that is why it comes to be called the Scales, in two parts, there is a strip connecting the two and courses together, running up to the vacancy. I think that contains less than ten acres.

Q. Didn't that 405½ acres cover several military lots?

A. Yes sir.

Q. The old military lots?

A. Yes sir.

Q. Do you remember how many lots it covered?

A. Let me see; four, I think, sir.

Q. Was it not six?

A. It may have been. Yes, it was six, because my sister got two of the lots, six I think.

Q. Now, did your father sell or convey away any of that land in his lifetime, any of that 405½ acres?

A. Yes sir.

Q. To whom?

1841 A. To two of my brothers, besides myself and one sister.

Q. What were your brothers' names?

A. James and Jeremiah.

Q. And your sister's name?

A. Sarah.

Q. Was she married?

A. Yes sir, married Nethkin.

Q. Who owns that land now?

A. Which, sir, the whole of it?

A. Yes?

A. Josiah Wolfe owns 100 acres, and Henry Lewis owns another

one. Frank Houser owns one; these lots now, it has been sold and divided up; Eugene Teats owns part of it; it has been cut up and sold in two or three parts; Israel Frankhouser owns a part of it now and Tom Haight owns a part of it.

Q. Where did your father live at the time of this suit you have spoken of between Summers and Elliott?

A. At Sang Run, sir, at the old homestead place.

Q. On this 405 acres?

A. Oh, no.

Q. Eh?

A. No sir; this is up near Cranesville; he lived down about six miles from that down. It is across on this side of the River—coming right down from Cranesville, it is about six miles to where my father lived.

Q. How far from the State line?

A. Six miles, seven miles, from the State line, about seven miles.

Q. Then this was a suit between a citizen of the State of Virginia and a citizen of Maryland, before a Maryland Justice of the Peace?

1842 A. Yes sir.

Q. And the Maryland Justice of the Peace decided in favor of the Maryland man, is that right?

A. That is right, sir.

Q. Was there no evidence on the other side?

A. None at all. They did not produce a witness.

Q. There was not a trial then?

A. Yes sir, of course there was a trial; three witnesses swore to the line; they started on trial, and Elliott didn't bring up any defense, didn't bring anybody to prove that Summers lived in Virginia.

Q. You were how old?

A. I am 95 years and six months.

Q. How old were you when that trial took place?

A. I do not recollect how old I was, between 10 and 15 I must have been.

Q. Between ten and fifteen?

A. Yes sir; I might have been 12, 13 or 14. I was not over 15 I know.

Q. Now, who were the witnesses?

A. Sir?

Q. Who were the witnesses you mentioned?

A. William Hoye, Gabriel Friend and John Friend, and William W. Hoye.

Q. They said that they carried the chain along the head of the spring, did they?

A. Yes sir, that it passed right through the head of that spring, leaving the very head of the spring above the line.

Q. Now, that spring is whereabouts in Cranesville?

1843 A. Well, I do not know that I could tell you that, unless you were acquainted; are you acquainted in Cranesville?

Q. No, but you describe it so that when I get there I can tell it is the spring?

A. On the lot old Dr. Fichtner used to own.

Q. Is that near the middle of the village, or off to one side?

A. It is a little back of the street, it is off the main street, a little south of the main street, right back of the house, right back of the house now where Daniel's store is, Daniel Browning's store is.

Q. Back of the Daniel Browning store?

A. Yes sir, south of it; south of it.

Q. If a line were run through that spring, would it leave any of the houses in Cranesville in Maryland?

A. Yes sir.

Q. What houses?

A. Well, I think it would leave, I cannot tell exactly, sir, because I do not know exactly the north and south line, I think it would leave two or three houses east of the line.

Q. Whose houses there now?

Q. Let me see. It is the house that Wesley Feather used to own that I think would come on the Maryland side with straight line across that spring, and I think Daniel Browning's storehouse would come in there. I have no correct knowledge of that, but I am under the impression that there would be two or three houses on the east side of the line; Hiram —— is the man who owns the Feather property there now, and I think his house would be east of the line; I am not sure of it; from the knowledge I have of the course I think he would be in Maryland if that were the line.

1844 Q. Where did this man Summers live at that time?

A. Well, he lived pretty near out to the woods on that road.

Q. In which direction?

A. East.

Q. East?

A. Yes sir.

Q. How far from this spring?

A. Well, it would be between a quarter and a half mile.

Q. Between a quarter and a half mile?

A. Yes sir.

Q. And he was the man who sued the sheriff of which County?

A. Preston County.

Q. Summers sued the Sheriff of Preston County?

A. Yes sir.

Q. For coming over there and lev-ing on his goods?

A. Yes sir; Summers summoned these men to prove where this line was, summoned Hoye and the two Friends.

Q. Of couse you have no personal knowledge of Hoye being along with Deakins on that survey?

A. Oh, no; Hoye—I expect it must have been before I was born that they ran that. I have no knowledge of anything of that kind, sir.

Q. How far did you say your father lived from Cranesville at the time that trial was had?

A. Well, it is between six and seven miles.
Q. Did you live with your father at that time?
A. Yes sir; at the time of that trial?
Q. Yes?
A. Yes sir.
1845 Q. That is all.
A. I think Summer claimed $50.00 damage and he got judgment for $50.00 damage and Elliott refused to pay it and they kept him there for pretty near a week, and at last he compromised in some way, and at last he gave them thirty dollars is my recollection of the suit now. Elliott gave Summers thirty dollars.

Redirect examination:

Q. Did you or not hear Hoye and the two Friends make the statement that they were on the survey that you referred to?
A. Yes sir.
Q. That is all.
A. They all stated there the business they were doing; I know one was a chain carrier and one a kind of a guide through the country, I think John Friend was the guide, and Gabriel was the chain carrier.
Q. Do you remember what Hoye said he was doing?
A. Surveyor, surveying.
Q. Do you or not know what relation Hoye was to Deakins?
A. I do not know; they were connected, but whether he was a half brother I do not know now. I know they were connected, but I do not know what the connection was.

That is all.
Further deponent saith not.
Signature waived.

GEORGE L. MOSSER, called on the part of the State of Maryland, being first duly sworn, says:

Q. State your age, residence and occupation?
1846 A. I was 75 years old last January, the last day of last January. I reside in the State of Maryland, Garrett County; I am a farmer.
Q. Do you know the line known as or called the Michler line?
A. I do.
Q. Were you present when Lieutenant Michler begun the location of that line?
A. I was not just there at the same time when he moved in there; I helped to cut out part of the line, about half way from the River, over toward the Mountain.
Q. You mean half way from the Fairfax Stone to the Mountain?
A. Yes sir.
Q. When was that, Mr. Mosser?
A. I could not just tell you exactly; it was in the spring of the year, but what year I cannot tell you, it was when Michler moved in, it was early in the spring.

Q. You were personally acquainted with Lieutenant N. Michler?
A. Yes, oh, yes sir.
Q. Is Lieutenant Michler living or dead?
A. I could not say for that.
Q. You could not say?
A. No sir.
Q. Did you have any conversation with him concerning the line that he was running?
A. I had.
Q. Please state what that conversation was, Mr. Mosser?

Objected to by Counsel for State of West Virginia.

A. Well, when he came up to my house, when they moved in, he told me what his business was, you know, that he was going to run from the Fairfax Stone, and I says to him, says I, Well, that
1847 Stone is not at the right spring. Says he, Why, and I told him. Well, that was all that passed at that time, and a week or so afterwards, or a little longer than that, when he started to survey, you know, to run the line, he told me, says he, I don't believe that line is going to stand, something like that.
Q. Did he give his reason why he thought his line would not stand?
A. Because it crossed the River at the main body.

Objection by Counsel for State of W. Va., to conversations between witness and Lieutenant Michler.

Direct examination continued:

Q. Were you present on the survey that Mr. Brown made in this case at any time?
A. Mr. Brown here?
Q. Yes?
A. Yes sir, I was present two or three different times.
Q. Where were you while Mr. Brown was engaged upon that work?
A. Well, I was up there at Pat Flynn's.
Q. I mean, Mr. Mosser, upon that part of the line?
A. Oh, upon what part of the line?
A. Yes, that is what I mean?
A. I was at what they call Fairfax Stone at one time, and then another time was on the Mountain.
Q. Did you point out the Fairfax Stone to Mr. Brown?
A. Well, I do not recollect whether I did or not.
Q. Were you there at the time that William H. Kitzmiller, Sr., was there with Mr. Brown when Mr. Brown was at the Fairfax Stone, and begun his survey?
A. Well, I could not say, I did not take particular notice; I do not know, I had to come before you folks here.
1848 Q. Were you at the Stone with Mr. Brown?
A. I was there at one time, when Mr. Brown was there and several hands.

Q. Were you at the point where the Michler line crosses the North Branch of the Potomac when Mr. Brown was there?

A. No, I don't think I was.

Q. What was the character of that country about the head waters of the North Branch of the Potomac?

A. Well, it was all a wilderness.

Q. Was anybody living in that country until recently?

A. Well, John Arnold, John S. Arnold lived down there where Pat Flinn lived, that was the nearest house.

Q. How far was John S. Arnold's house from the head waters of the Potomac?

A. From the Fairfax Stone?

Q. And the Potomac Spring, too?

A. It is about a mile and a half, I suppose up to them, it is about close onto two miles.

Q. A mile and a half from the Fairfax Stone and two miles from the Potomac Spring you mean?

A. It is a mile and a half from where John S. Arnold lived up to the Fairfax Stone, that is, where the Fairfax Stone stood, and about two miles where Mr. Brown put up the Stone, as near as I can recollect.

Q. Do you mean the stone at Potomac Spring that Mr. Brown put up?

A. Yes sir, I think it is about two miles.

Q. How long have you known what is now called Potomac Spring where Mr. Brown put up the stone?

A. Well, it has been two or three years since you men put up the Stone there.

1849 Q. But the question I asked you was, how long have you known that Spring?

A. I have known that Spring to 1847.

Q. Did you ever know that Spring to go dry?

A. I never did; I have taken many a drink at the Spring before ever you come up.

Q. How long have you known the Springs at the Fairfax Stone?

A. I have known that—well I could not say exactly, but long before Michler undertook to run that.

Q. Have you ever known those springs to go dry?

A. Yes sir, they are dry now, I think, because they always go dry in the summer time, when it is a little dry spell.

That is all.

Mr. PRICE—Cross-examination:

Q. Mr. Mosser, how near do you live to the Fairfax Stone?

A. We call it about two miles and a half.

Q. Which direction from the Stone?

A. North from the Stone.

Q. Directly north?

A. Well not, pretty close directly north.

Q. How far do you live from the Michler line?

A. From the Michler line, it is about a mile.

Q. A mile west of the Michler line?
A. Northeast.
Q. You live a mile directly east of the Michler line?
A. Pretty much so.
Q. Then you are not directly north from the Fairfax Stone?
A. Not altogether.
Q. You are northeast?
1850 A. Northeast, yes sir.
Q. How long have you lived there?
A. I moved there in 1861.
Q. Where had you lived before that?
A. Across the Mountain on the other side of the Mountain, about four miles from there.
Q. Further north?
A. Yes sir.
Q. How long had you lived in that neighborhood?
A. Where I am living now?
Q. No, where you used to live before you lived over there?
A. I lived in that neighborhood; in 1840 I moved from that neighborhood.
Q. You went into that neighborhood in 1840?
A. Yes sir.
Q. About six miles from the Fairfax Stone, or such a matter?
A. Well, yes sir, just about six miles, six and a half, something like that.
Q. You have lived at that present residence since 1861?
A. Yes sir.
Q. Still live there?
A. I stay there; I do not know whether I live there or not.
Q. You live pretty well if you live as well as when I was there. What other houses were in that country near the Fairfax Stone?
A. Lloyd Kitzmiller.
Q. Was he nearest?
A. Yes sir, lived about a mile below me.
Q. Then where was the Flynn or Arnold place?
A. The Arnold place was there when he—I told you, you know that John S. Arnold was the nearest at that time.
1851 Q. How close was that to the Fairfax Stone?
A. About a mile and a half.
Q. When did you first see the Fairfax Stone?
A. Well, I could not tell you exactly when I first seen it.
Q. About when?
A. It was somewheres in '47 or '8 or '9, somewheres along there.
Q. What was there when you first saw the Stone, what kind of a Stone was it?
A. A small Stone about that wide and about that high (indicating). About eight inches wide and it stuck up about six.
Q. Was it buried in the ground?
A. Fastened in the ground, yes sir.
Q. Did it have any inscription on it?
A. Yes sir.

Q. What?
A. F. X.
Q. Anything else?
A. That is all I could see at that time.
Q. Did that inscription appear to be ancient or otherwise?
A. It looked like it was pretty old.
Q. Now, where was it located with reference to where the present monument is?
A. Right against it.
Q. Right against it?
A. Yes sir.
Q. Was it north of it?
A. North of it.
Q. That is the old stone was just north against the north side where the new stone now stands?
1852 A. Yes sir.
Q. Do you know who put that present monument there?
A. I do.
Q. Who?
A. A fellow by the name of Pat Kennedy, an Irishman.
Q. How did he come to put it there?
A. Mr. Michler hired him.
Q. It was put there, then, under Lieutenant Michler's direction?
A. Yes sir.
Q. At the time he run the Michler line?
A. Yes sir.
Q. That was in 1859, was it not?
A. I think it was somewheres along close there; I could not just say exactly what month or what year, but it was the time Michler run the line and that Stone was put there.
Q. When did you first become acquainted with that Fairfax Stone, and were made aware of what it was?
A. Yes sir, my brother-in-law showed me.
Q. Who was your brother-in-law?
A. John S. Arnold; we happened to be out hunting that country across.
Q. How long had he lived in that country?
A. He lived there, I guess about two years before Michler run that line.
Q. And he showed you?
A. Yes sir; we happened to be out hunting and he asked me whether I ever saw that Stone, I told him no, I hadn't seen it, but I had heard tell of it; Well, he says, We will go right past there, and he showed it to me.
1853 Q. Is he living or dead?
A. He is dead, been dead——
Q. How old a man was he at that time?
A. He must have been about 30 or 35.
Q. You own the place you live on, Mr. Mosser?
A. Yes sir.
Q. How long have you owned it?

A. Ever since I moved there.
Q. Who did you get it from?
A. From William Combs.
Q. How close does it come to the Michler Line?
A. Come right up to the Michler Line. They come right past the line, this land run right up against the line.
Q. Does your deed call for the State line?
A. No sir.
Q. Does it run up to the line?
A. No sir; I have got the lower end of the 400 acre tract.
Q. Did Mr. Comb's land call for the State line?

Objected to by Counsel for State of Maryland.

A. I could not say whether it called for the State line or not, but it called for the beginning of Block Maple.
Q. With Block Maple, where is that?
A. It is one mile from the Fairfax Stone.
Q. How is it marked?
A. Well, it is a block cut out, that is the way it is marked.
Q. Were there any other marks except the block cut out?
A. Yes sir, but I could not say what kind of marks they was, it was pretty well decayed when I seen it.
Q. Now, that is a mile in what direction from Fairfax Stone?
1854 A. North.
Q. Due north?
A. North.
Q. Where is it with reference to the Michler Line, that Block Maple?
A. The Michler Line runs a little to the left of that Block Maple.
Q. About how far?
A. A rod or so.
Q. A rod or so. Now, what was that Block Maple a corner of?
A. It was the head corner of a beginning, the corner of Lots of Mr. Combs' land.
Q. Military lots?
A. Yes sir.
Q. Do you know anything about the number of the lot?
A. No, I don't.
Q. Mr. Combs owned some of those Military Lots?
A. Yes sir. He owned 500 acres.
Q. Mr. Mosser, that stone that Mr. Michler began to run from, what name was it known by always?
A. Fairfax.
Q. Fairfax Stone?
A. Yes sir.
Q. Now you have been asked about the head spring of another branch further west?
A. Yes sir.
Q You have no common name for that spring?
A. No sir, only we used to call it the Red Spring.

Q. The Red Spring?
A. Yes sir.
1855 Q. You never heard it called the Potomac Spring?
A. No sir, not until after they run it from there.
Q. That was Mr. Brown's name?
A. I do not know whose name, whether Mr. Brown or who.
Q. You never heard that name until Mr. Brown went there?
A. No sir.
Q. There was no monument of any kind at that spring?
A. No sir, I never saw one there, only the stone they put there.
Q. Mr. Brown put it there?
A. I do not know whether him or his friends.
Q. It was put there about 1897, the time Mr. Brown was surveying?
A. Yes sir.
Q. There was no monument there of any kind before that?
A. No sir; no sir.

That is all.

Direct examination continued:

Q. Mr. Mosser, this maple that you speak of it the beginning point of the lot which you have in mind. It is the beginning point of what shaped lot, what is the shape of the lot?
A. I could not just exactly tell you what is the shape of the lot of course. I ran around, I carried a chain around.
Q. Do you know the courses and distances of the lot?
A. No, I do not know the courses and distances.
Q. Is the lot a square lot?
A. Some of them is square.
Q. This particular lot where the maple is?
A. I think that is square, as near as I can recollect.
Q. Do you know the length of the lines of that lot?
A. Sir?
1856 Q. Do you know the length of the lines of that lot?
A. I think eighty rods, I think.
Q. Each way?
A. Yes sir.
Q. Now, this head of the spring which Mr. Brown has called Potomac Spring, as you say; did you or not know whether it is higher or lower with reference to the top of the Mountain than Fairfax Spring, the spring at the Fairfax Stone?
A. I could not say whether it is higher or lower for that; I have been all through them woods, but never took enough notice about the springs.
Q. Is it closer or further away from the top of the mountain?
A. Closer.
Q. Than the spring at the Fairfax Stone?
A. Yes sir, a mile or more.
Q. Is it further east or further west than the Fairfax Spring?
A. West.

Q. Does the water from the Red Spring flow into the Potomac River?

A. Yes sir, unless it has changed lately, and I don't think it did.

That is all.

Mr. PRICE:

Q. The Fairfax Stone and spring is on what mountain?

A. We call it Fairfax Mountain.

Q. Fairfax Mountain or ridge?

A. Fairfax Hill.

Q. That is a spur of the Alleghany, the main Back Bone?

A. Well, it is the ridge that runs up towards the Back
1857 Bone.

Q. The ridge that runs up towards the Back Bone?

A. Yes sir.

Q. Mr. Mosser, are there any bear up there in your country now?

A. No sir, I think not; I think they are scarce.

Q. How long since you knew of any bear being killed up there right in the neighborhood around there of Fairfax Stone and the head of the Potomac River?

A. There has not been any bear killed around Fairfax Stone for the last 12 or 13 years.

Q. How about deer?

A. I do not know whether there has been a deer killed in that length of time.

Q. Do you know when the Railroad went up in there?

A. Yes, I think I do.

Q. What year?

A. I could not say exactly what year.

Q. Was it about '83, or '5, along there?

A. I could not say what year at all, but I hauled goods up there for it, but I couldn't tell, I didn't take any particular notice. When I am hired to do anything I generally go and do it and that is the last of it.

Q. Well, up to the time that the Railroad went in there, there was pretty good hunting up in there?

A. Oh, yes sir; yes sir.

Q. The Railroad broke it up?

A. It was not the Railroad chased the deer out; it was old Bob Eastham.

Q. Where did Bob live?

A. Lived up there at Davis.

1858 Q. That is how far from the Fairfax Stone?

A. About seven or eight miles, straight line.

Q. South?

A. Yes sir.

Q. He was a great hunter?

A. I do not know whether he was so much of a hunter.

Q. Well, he used to get a crowd of these foreign hunters and come in and slaughter the deer?

A. Oh, yes; yes sir; he had at one time sixty-five hounds in there.

Q. And that was before the Railroad?
A. No sir; at the time of the Railroad, they ran up as far as Thomas at that time; there has been a many of them didn't get back either.
Q. The hounds didn't get home, some of them, did they?
A. No sir.

That is all.

Counsel for State of Maryland:

Q. What kind of game were you and Arnold hunting when he pointed out Fairfax Stone?
A. Deer and bear, anything we could come across, we were not particular about the game.

Mr. PRICE:

Q. Were you looking for big game?
A. We were not looking for quail and things like that.

Counsel for State of Maryland:

Q. Red spring does not stand on Fairfax Ridge?
A. No sir, that is on the Mountain, Back Bone Mountain.

Further deponent saith not.
Signature waived.

1859 RICHARD T. BROWNING, called on the part of the State of Maryland, being first duly sworn, deposes and says:

Direct examination:

Q. Please state your age, residence and occupation?
A. Richard T. Browning, age 63, residence, my post office is Tahyerville, Garrett County, Maryland. My occupation is Assistant Fish Commissioner of the State of Maryland.
Q. What if any office have you ever held in the State of Maryland elective or appointive?
A. I served in the Legislature in 1876 and in the Senate from 1886 to 1888; I also served as inspector of the mines from 1888 to 1892.
Q. Are you or not acquainted with the locality in the neighborhood of the Fairfax Stone and of Potomac Spring?
A. Yes sir, I have some knowledge of the country.
Q. How long have you known the country in that neighborhood?
A. My knowledge of that immediate section dates back to 1897, when I was on the survey with Mr. Brown on the boundary line between the two States. My first knowledge of that section of the country dates back to 1867 or 1868.
Q. What was the character of the country when you first knew it?
A. It was a very wild country, it was a dense wilderness, about where station Hamilton on the West Virginia Central Road is, as far as ever I went southwest up there; I was up to the old Dobbin Hotel near, somewhere near Davis.
Q. Was or not at the time of which you speak of becoming first

acquainted with the territory, the same occupied by game, large game?

A. Yes sir, such as bear, panthers, deer.

Q. In 1897, at the time of the survey you speak of by Mr.
1860 Brown, did you not observe any evidence of the presence of wild animals or game in that neighborhood?

A. Oh, yes sir; we did.

Q. Please state what were your observations in that particular?

A. I noticed a great deal of deer sign, in fact some one told me when we were measuring up the westerly source of the River, some one told me that hunters were camped out near there, and I went out to make a search for it, and I found the camp, and in doing so I saw a great many deer tracks, and on another occasion we saw an old bear pen. It was located at a sulphur spring and there was a good many evidences of bear having been around there recently, they gnawed the trees around near the pen.

Q. Any evidence in the way of dung?

A. I do not remember specially, but I think there was, but I know very well that on the way home to camp we tracked a bear in the mud along the road, which had been very recent, I suppose a day or two, maybe.

Q. Did you or not on the occasion of the survey point out any objects or monuments to Mr. Brown as marks on tracts of land, the beginning points for other lands?

A. No sir, I do not remember that I did; by his direction; I think I was sent on some occasions to locate the beginnings of some of the old tracts, but I do not know that I know of any up in that section, of my own knowledge.

Q. You mentioned locating the western source of the River. I suppose you meant the western source of the North Branch of the Potomac River?

A. Yes sir.

Q. Where was the western source located at that time?

1861 Objected to by Counsel for the State of West Virginia.

A. We located it at a spring about 390 some feet as I remember from the summit of the Back Bone Mountain.

Q. Look at the plat and say how that spring *of* at which you located the beginning of the western branch of the Potomac River is marked upon the plat in this case?

A. Well, we located the Potomac Stone about three hundred and some feet—I forget the exact feet—from the summit of the Back Bone mountain; it is marked Potomac Spring on the plot.

Q. How far is Potomac Spring, as well as you know, from Fairfax Stone?

A. Well, it is about a mile and an eighth I think.

Q. Is it east or west of Fairfax Stone?

A. It is in a westerly direction.

Q. Where is Fairfax Stone standing, does that stand on Back Bone Mountain, or some other locality?

A. No, it stands in a flat, piny country, Fairfax Stone does, at the head of a small stream.

Q. And not on the Mountain?
A. The Back Bone Mountain?
Q. Yes sir?
A. Oh, no.
Q. Do you or not know which of the springs, which of these spring-, to wit, Potomac Spring, and the spring at Fairfax Stone, is higher?
A. I do not, I should judge Potomac Spring is highest.
Q. In what direction does the water flow from Potomac Spring?
A. It flows in an easterly direction.
Q. Do you know whether or not it flows into the Potomac River, if yea, please state?
1862 A. I know it is a branch of the North Branch of the Potomac.
Q. Does it or not stand on the watershed of the east or west side of Back Bone Mountain?
A. On the east side, southeast side, I reckon it would be.
Q. Do you or not know what is the watershed of the North Branch of the Potomac River, if yea, please state what it is?
A. Well, I suppose Back Bone Mountain.
Q. Which side of the Back Bone Mountain?
A. East side.

The witness is with you.

Mr. PRICE—Cross-examination:

Q. Mr. Browning, there was no monument of any kind at that point designated on the map as Potomac Spring when you went there with Mr. Brown in 1897, I suppose?
A. No sir, not that I know of.
Q. The monument that is there now was put there by Mr. Brown, or by the hands under his direction?
A. Yes sir.
Q. Did you run a line due north from that point?
A. From where we fixed the Potomac Stone?
Q. Yes?
A. Yes sir, I suppose that was the idea, that they were running a due north line.
Q. It was apparently due north to you?
A. Yes sir.
Q. There was no marked line running north from that Spring, was there?
A. No sir.
Q. Where did you get the name Potomac Spring?
1863 A. Well, we got it when we located what we supposed was the western source of the Potomac River, we called it Potomac Spring, and planted a stone and called it Potomac Stone, that is I suppose the origin of it.
Q. You, or your party under Mr. Brown's direction, gave it that name?
A. Yes.

Q. You do not know that it had any such name before you went there?

A. No sir, we dug it out of the ground and put it there, so far as that goes.

Q. Do you know when the West Virginia Central and Pittsburg Railway was built up the North Branch as far as Thomas?

A. No, I do not remember exactly but it was in about 1882, I reckon; '82 and '83 it was finished up in there.

Q. Some 12 or 15 years before you were there on that survey?

A. Well, I say it was about '82 or '3, and we were there in 1897.

Q. Now, how far is the town of Thomas from Fairfax Stone?

A. I do not know, sir.

Q. About?

A. Well, I could not give an idea, a correct one; I know the general lay of the country and all that.

Q. It is not more that a mile or two?

A. I suppose a mile and a half, or two miles; the station Fairfax is about, I suppose, a half mile from the Fairfax Stone, something like that.

Q. The station Fairfax upon the West Virginia Central and Pittsburg Railroad?

1864 A. Yes sir. How far it is from Fairfax to Thomas I do not know; not very far.

Q. Were you at the town of Thomas in 1897?

A. No sir.

Q. Were you there anywhere about that time?

A. No sir.

Q. Have you ever been there?

A. No sir—yes sir, I passed through on the road, but never off at Thomas. I passed up on the road about 1884, I reckon, it was to Davis and back.

Q. Were you at Fairfax Station in 1897?

A. To stop off you mean; passed through there.

Q. I mean in 1897?

A. Yes sir, oh, yes sir.

Q. Was there a settlement there?

A. Oh, there was a few little houses, a kind of a way station, a very little business going on.

Q. Now, Mr. Browning, is it not a fact that in 1897 that whole territory along the West Virginia Central and Pittsburg Railway had a great many people in it and saw mills and coal mines along it?

A. Oh, yes sir; yes sir, I suppose the mills went in there with the road.

Q. The railroad was within a half mile, or such a matter, of Fairfax Stone?

A. I suppose about that, maybe a little more or a little less, I do not know, not very far.

Q. Now I understand you to say that you had first some acquaintance with the country as far back as 1867 or 1868?

A. Yes sir.

1865 Q. And you said that you had been to Hamilton?

A. No sir.

Q. What did you say about Hamilton?

A. I said that the trail that we went into that country over, crossed at the station on the road about where Hamilton is now. That is the point we used to cross. Of course that was before the road was built.

Q. It was a long while before the road was built?

A. '68 or—'68, that is when it was, I remember I come up there from Cumberland and went out there.

Q. What were you doing out there?

A. Fishing.

Q. Fishing?

A. Yes sir, caught thirty-nine hundred brook trout right where Davis now stands and walked three miles over to the old Dobbin Hotel to stay all night.

Q. Where was it you saw the bear tracks in the mud in 1897?

A. It was somewhere between the point where we come out from the Potomac Stone, it was at a point where we come out *of* from the Potomac Stone onto the road leading from where we first camped over the mountain, it was between that and our camp at Arnold's Hill, Camp Fairfax we called it, I believe.

Q. There is an occasional bear at different points in Garrett County, Maryland, is there not?

A. Yes.

Q. North of Oakland as well as south?

A. Yes sir; it is very seldom that we see any sign of bear in this country north of Oakland.

Q. Have they not killed bears not long since down about 1866 the George's Creek Coal region?

A. I never heard of one being killed there in my life. It is killed the other way from there, north of George's Creek.

Q. Over in that country?

A. I never heard of a bear being killed on George's Creek; Meadow Mountain, in that section, there has been some killed in the last ten years.

That is all.

Counsel for State of Maryland:

Q. You used one expression with reference to Potomac Spring in your cross-examination when you said you dug it out of the ground?

A. I meant the stone.

Q. I wish to know whether your party dug the spring up or you found it there?

A. Oh, we found the spring there, and a pretty good one, too.

Mr. PRICE:

Q. But you give it the name of Potomac Spring?

A. Oh, yes sir.

Q. And you meant that you dug the name out of the ground?

A. No sir, I did not mean that. I meant that that was the Potomac Stone, and I suppose that they understood that hereafter it was to be the southwest corner of the State of Maryland.

Q. That is, your party were making the northwest corner of the State of Maryland, and calling it Potomac Spring?
A. Yes, sir, subject to decision, of course.

Further deponent saith not.
Signature waived.

1867 CRANESVILLE, PRESTON COUNTY, W. VA.

Continuation of Testimony on Behalf of State of Maryland.

ETHBELL FALKENSTEIN, called on behalf of the State of Maryland, being first duly sworn says:

Counsel for State of Maryland:

Q. State your age, residence and occupation?
A. I am going on 66; I reside on the old Gabriel place; I suppose it will be known by that generally, about a mile and a quarter from Cranesville. I am a farmer.
Q. Were you present at any time upon the survey in this case while Mr. Brown was making the locations, in 1897?
A. I was with him part of the time; you know I came to you several times.
Q. Did you point out any object to Mr. Brown on the ground?
A. Not on the ground, I did not; I didn't know anything about it there.
Q. I asked you if you pointed out any object to Mr. Brown on the ground?
A. I understood that—no, I did not.
Q. Did you point out any tree or trees to Mr. Brown?
A. No sir, not there, I didn't.
Q. Did you point them out to him any place?
A. I do not recollect that now, whether I did or whether I did or not; he was crossways, back and forward.
Q. Did you point out a red oak tree to Mr. Brown?
A. To some one I did at the time, but I cannot say positively it was Mr. Brown, but to the parties that was there.
Q. Do you remember the year when it was you pointed out that tree to the party that was there?
1868 A. Yes sir—I do not recollect just what year it was; I didn't set it down, but you mentioned a little while ago in 1897; it must have been about that time, I guess; it was when the Maryland party surveyed over this westerly point there; they were here to survey.
Q. What did you point out that red oak tree as?
A. As the center of Deakins Line; Deakins Line there.
Q. How long had you known that tree, Mr. Falkenstein?
A. I could hardly tell you that.
Q. Who pointed that tree out to you?
A. John E. Otto pointed it out to me.
Q. Is Mr. Otto living or dead?
A. He is dead now.

Defendant objects to testimony of witness about this tree.

Q. Do you remember about the time when Mr. Otto pointed it out to you, when he first pointed it out to you?

A. The first time? Indeed I don't. Me and him was along the line fence between us and were talking about the line, you know, as is natural, and he says, Here is the center line of the Deakins line, this is a center line, marked fore and aft. I remember that very well.

Objection by State of West Virginia, as to conversation between witness and Otto.

Q. Did you see the marks on the tree?

A. Yes sir.

Q. Was it marked in the center as stated by Mr. Otto?

A. It was marking a line tree, I would not positively say whether it had three hacks or two.

Q. How long have you been living in this section, Mr. Falkenstein?

1869 A. It is about 36 years.

Q. What was the character of this country about Cranesville when you first moved in?

A. Well, excepting the Cranes place and a few little places cleared out, a few small farms cleared out, the Davis farm and Wolf.

Q. What was the character of the rest of the country about here then?

A. Well, this here was all mountain, and is yet, a range of mountain, a half moon shape.

Q. Was it in woods?

A. Yes sir, of course, mountain.

Q. Do we understand you to say, then that with the exception of the few places you have named, the remaining country was all in woods?

A. The mountain part of it. The flat country, now and then a farm cleared out, a small one, between here and Terra Alta.

Q. Look at the plat and state where that red oak tree is you pointed out?

A. The red oak is right here (indicating,) about 22 or '3 rods from this corner this way.

Mr. PRICE:

Q. East or west?

A. South.

Counsel for State of Maryland:

Q. Which line?

A. It is the third line.

Q. Third or fourth line?

A. Here is the third line, there (indicating).

1870 Q. How is it marked on the map?

A. There is no indication on the map. The red oak is not on the outside line, it is northeast of this corner; it is 19 rods from this corner, to this corner.

Q. (Mr. Sincell states there is no corner in the line of the tract called Diadem.)

A. Those things here is bothering me a good bit. Here is where that 19 rods should be; I am trying to get the western part of the survey, it is not shown here as on the plat I have. I have the plat of the Diadem with all these subdivisions marked, whose they are and all that sort of thing. This is a straight line between us and the upper place. This our tract here (indicating).

Q. Please confine your answer, if you can, to the location of the red oak tree that you pointed out; not tell from the plat before you, where that point is.

A. I think it is right here (indicating) but I am not positive. It is on the fourth line, at the far *and* of the fourth line.

Q. Fourth line of what?

A. Of the Diadem. I do not believe that I can locate exactly that white oak. From these lines, it is at the end—it is between 20 and 25 rods south of the fourth line of the Diadem.

Q. If you cannot locate it from the plat, please say so?

A. I could if I had the original plat here.

Mr. Price, you take the witness.

Cross-examination by Mr. PRICE:

Q. Mr. Falkenstein, you said you did not remember whether it had two or three hacks on it?

A. No I could not say positively it was that; it was marked on three sides.

1871 Q. Which of the sides was it?

A. Marked on north and south.

Q. What kind of a tree was it?

A. A red oak tree, a very large red oak.

Q. Was that on your line?

A. No, it was on Mr. Otto's side of the line fence.

Q. Did you claim the land where this tree stood?

A. No, I didn't claim it.

Q. Eh?

A. No, I didn't claim it.

Q. Did Mr. Otto claim under a Maryland title?

A. Yes sir.

Q. How far did his line extend west of that tree?

A. The line was not more than five or six feet west of that tree.

Q. And he told you that that was the old Deakins State line?

A. Yes sir.

Q. Mr. Falkenstein, wasn't that red oak line tree between you and Mr. Otto?

A. No sir.

Q. How far off the line was it?

A. Well, it was about ten rods, I think; of course I am just guessing at it, about ten rods from where the line crosses our line, crossing the Deakins line about ten rods.

Q. What I want to know is how close it was to the division line between you and Otto?

A. Five or six feet, I guess.
Q. Five or six feet?
A. Yes sir.

Q. It was not on any line of the Diadem tract, was it?
1872 A. Yes sir, it was within the bounds of the Diadem.
Q. Within the bounds?
A. Within the outside of the Diadem line, you know, about 22 or 23 rods.
Q. Inside of the bounds?
A. Inside of the Diadem bounds.
Q. Then it did not stand on the Diadem line, did it?
A. Why not? I have reference to the outside Diadem line.
Q. What I want to know is did this red oak tree stand on one of the outside lines of the Diadem?
A. No.
Q. It did not?
A. 23 rod, I have been trying to tell you, 23 rod I said.
Q. That is what I thought you said; that is all.

COUNSEL FOR PLAINTIFF:

Q. Do you remember the words of Mr. Otto when he told you about this red oak?
A. I recollect "Here is a tree, this is marked, as you see, fore and aft and therefore the center of the line, center line."
Q. On what line, did he say?
A. On the Deakins line.
Q. These were the words he used, did he?
A. Yes sir, to the best of my recollection.

That is all.

Mr. PRICE:

Q. You are the same man who was summoned as a witness in this case some years ago, aren't you?
A. By whom?

A. By the State of West Virginia?
1873 A. Oh, yes sir.
Q. Mr. Falkenstein, you said you lived on the old Gable place?
A. Yes sir.
Q. Why was it called the Gable place?
A. Because Gable settled it in the first place.
Q. What Gable is that?
A. His name is William Gable.
Q. Did he take the land up?
A. No indeed, bought it of Crane.
Q. John Crane?
A. Yes sir.
Q. It was a part of the Crane land then?
A. Yes sir, part of the Crane place.

For PLAINTIFF:

Q. Did he buy it from Mr. Crane as a part of the Diadem?
A. I guess.

For DEFENDANT:

Q. Did Mr. Crane have a Maryland title or a Virginia title?
A. I could not tell you that, that was before my recollection, that happened 70 years ago, I expect, that is Mr. Crane bought this Diadem tract.
Q. Mr. Crane held under a Virginia title?
A. I could not tell you that.
Q. Eh?
A. I could not tell you that.
Q. Didn't you know the land was assessed in Virginia for taxes?
A. I have heard that, I never knowed what the suit was, I knew they had a suit about it.
Q. Mr. Crane lived in Virginia, or claimed to?
1874 A. Ye- sir, I believe so.
Q. He lived between the two lines, didn't he?
A. Well, the building was between the two lines, the Deakins line and the Michler line.

That is all.

Q. Do you know of your own personal knowledge whether Mr. Crane paid taxes in Virginia or not?
A. Oh, no; no I do not know that, it was before my time. Mr. Crane has been dead quite a number of years.

Mr. PRICE:

Q. Did you know him?
A. Oh, yes sir; I knew him well and his whole family, but in regard to that I didn't know; he was a man who had a great deal of business at the Preston Capital.
Q. Do you know where he voted?
A. I don't.
Q. Did you ever see him vote?
A. Sir?
Q. Were you never at the polls when he voted?
A. No.

For PLAINTIFF:

Q. They did not own any other property than that Diadem?
A. Why, the Bank Survey.

For DEFENDANT:

Q. Mr. Falkenstein, do you know the eastern boundary of that eight thousand acres of survey?
A. Yes sir.
Q. Now, this red oak that you speak of, wasn't it in the line with that eastern boundary of the Bank Survey?
1875 A. You see, it is about 23 yards south, of the Banks corner. It is not in an exact line.
Q. How far off; *it is* not pretty near in a straight line?
A. Right across the Deakins Line on the line—I think you go to

the corner in the Diadem line there; the Banks Survey comes in in place of the Diadem.

Q. What I am asking is this, take the eastern boundary of the Bank Survey, and extend it southward, won't it strike, or very nearly strike this red oak tree?

A. It will come close to it, about five or six feet, as I told you awhile ago.

That is all.
Further deponent saith not.
Signature waived.

JOHN P. LEWIS, called on the part of the State of Maryland, and being first duly sworn, deposes and says:

Direct examination:

Q. State your age, residence and occupation?

A. I am going on 86; I live about. I have been in Maryland all the time until just here lately. I live at Mr. Riley's. I was grubbing when he called me out of the clearing. I just work about for people, do anything that they set me at.

Q. Mr. Lewis, do you remember when Mr. Brown was making a survey along here in this case?

A. Yes, I think he was making it about the time he came after me, wasn't he?

Q. Did you point out any object or anything on the ground to Mr. Brown?

1876 A. No sir.

Q. Did you not point out a spring?

A. Oh, I did a spring, I did.

Q. Where is that spring?

A. Here (indicating) it is right back here; I can go to it; it is built up since I was to it; it is right back here.

Q. What do you know about that spring, Mr. Lewis?

A. Well, all I know about the spring, it has been a spring ever since I can recollect; old Gaby Friend swore to the line, it run right through that spring.

Defendant objects to statement concerning spring.

Q. When did he swear to the line running through that spring?

A. Oh, it has been near 60 years, I expect; I was young then, working for old Johnny Crane then.

Q. Who was Gabriel Friend?

A. Well, I do not know who his father was, nothing about that, I didn't know; they called him Gabriel Friend.

Q. Where did he live?

A. Down about Friendsville.

Q. Where is Friendsville?

A. It is away down the River here.

Q. In what State and County?

A. It is in Maryland, I suppose.

Q. What County?

A. It would be Garrett County, extending up in Garrett County, I suppose.

Q. What line did he say run through the spring?

Objection by defendant.

A. Why, the Maryland-Virginia line they was running.

1877 Q. What Maryland and Virginia line?

A. Well, there is only one Maryland, is there not?

A. Yes, but what Maryland and Virginia line, what line was it?

A. The line betwixt the two States, betwixt Maryland and Virginia.

Q. Did Gabriel Friend have anything to do with running out that line?

A. I think nothing, only hired, as I heerd him there.

Q. Did he state who the surveyor was?

Objected to.

A. I think Deakins, Deakins, I think was the surveyor.

Q. Now, please state what Gabriel Friend said at that time about the line run across that spring?

Objected to.

A. Well, he measured it off there at the spring and said that it run right through that spring and they stretched the chain across the spring and let it lay there over night and camped and then it run on.

Q. Did he or not say that the line which they were running at that time crossed over that spring?

A. Well, he said it run right through that spring, right through the spring.

Q. How did Gabriel Friend come to swear about the spring?

A. He swore he was helping to carry a chain at the time they run the line.

Q. Did he say anything about Military Lots?

A. No, I don't recollect hearing anything said about them; I don't think there was any question that way asked.

Q. Where was he at the time he swore to this line crossing the spring?

1878 A. Why, he was at the spring, he was right at the spring.

Q. How did he come to be there?

A. They sent for him; they had a dispute about taxes at the time, and they sent for him; he helped carry the chain, and he comes up and swore to this spring, swore that the line run right through the spring; that is the way he come to do it, I suppose.

Q. Did I understand you, Mr. Lewis, to say that Deakins was the surveyor for whom Gabriel Friend said that he carried the chain at that time?

A. Yes sir, I think it was; Deakins was the man, if I recollect right. Deakins was the surveyor.

That is all.

Mr. PRICE—Cross-examination:

Q. You say it was about a tax matter?
A. Yes sir. They had a dispute up about the line.
Q. Who had the dispute?
A. Well, it was old Johnny Crane and some other man who disputed about the line.
Q. What other man?
A. Well, I do not remember just who it was; I know it was old Johnny Crane sent for old Gaby; He had helped carry the chain, the report was, and he come up and swore it run right through that spring.
Q. Who did he swear before, who took the oath?
A. I think old Johnny Crane was Squire. I think he swore him.
Q. Was Johnny Crane one of the parties to the dispute?
A. Yes sir, he was one of the parties that had the dispute about the line.

Q. And he was the man that administered the oath?
1879 A. Yes sir.

Q. Now, who was the other party to the dispute?
A. I do not remember who it was disputing with old Johnny.
Q. How were they disputing?
A. Well, they was disputing about the taxes; they claimed it in Maryland and claimed it in Virginia.
Q. But who was disputing about it?
A. Old Johnny Crane and some man was disputing about it; they were disputing about paying the tax.
Q. Just having a talk about it?
A. Yes sir, and the two States.
Q. The two States.
A. Yes, sir; each one wanted the tax.
Q. Which one got the tax?
A. I do not know.
Q. Don't you know that the State of West Virginia collected taxes east of that spring after that?
A. Well, I do not remember whether they did or not.
Q. Don't you know that the old State line was recognized east of that spring after that dispute?

Objection by Plaintiff.

Q. I think I heard that, but I do not know anything about it. I did hear, I think, once, that it run to the other Crane place; they said there was a chestnut tree marked, but I do not know anything about it.
Q. Who told you that?
A. It was reported all through the country.
Q. It was recognized in the neighborhood here as the chestnut tree on the other side of the Crane place?
1880 A. Yes sir, they was just talking about it; I did not know anything about it.
Q. You don't know anything about this spring?
A. Only what he swore; I cannot swear to it.

Q. Did anybody else swear about the line?
A. No sir.
Q. Did they have any other witness?
A. No.
Q. Did they have any trial?
A. No trial.
Q. What were they swearing this man for?
A. Well, they hadn't had no trial, but they disputed, Virginia wanted the tax; of course over here, and Maryland wanted them, and they sent for him to settle the dispute and they had him sworn, but I do not know how they settled it.
Q. Who else was present?
A. Oh, there was not any one that I know of.
Q. Nobody but Crane, Gabriel Friend and you?
A. There was Crane and Gabriel Friend and me and some of Crane's hands, I do not recollect.
Q. Were you working for Mr. Crane then?
A. Yes sir.
Q. How old were you?
A. How old was I?
A. Yes?
A. Oh, I cannot tell; I am going on 85 now and I was not more than growed up; I was young, but it has been a good many years ago, but I cannot just tell what year it was in.
Q. Was Crane living in this part of the country then?
1881 A. Yes sir, on the Crane place here.
Q. Whose house is there, where he lived, now?
A. Oh, I do not know, he built a new house there; I do not know whether that is there; I have not been there for several years.
Q. Well, was that house of his east or west of this spring that you talk about?
A. Oh, it was east of this spring.
Q. East of the spring?
A. Away over east of the spring.
Q. Well, Johnny Crane always claimed to live in Virginia?
A. Yes sir, he always claimed to live in Virginia.
Q. Did you ever live with him?
A. Oh, I never just lived with him, but I worked for him.
Q. You worked for him?
A. Worked for a year with him, hired.
Q. When you were working for him there where did you vote?
A. I was not old enough to vote at all.
Q. You didn't?
A. No.
Q. Where did Johnny Crane vote?
A. I think he voted in Virginia, I think so.
Q. And paid his taxes in Virginia?
A. I think so, most of his land.
Q. The land where he lived?
A. Well, where he lived, I think he paid his taxes mostly in Virginia, I think.

Q. Did he have much land there?

A. Oh, he had a great deal that he claimed; I do not know whether it was all his'n or not, but he claimed a good deal.

1882 Q. Where did Gabriel Friend live?

Q. Down about what they call Friendsville.

Q. Then, at that time?

A. Then, yes sir, at that time, always lived down there until he died, I reckon, I think so.

Q. Had you ever known him before?

A. Oh, I knowed him when I seen him, but was not well acquainted with him.

Q. You said that he carried the chain to this spring and camped there that night?

A. Yes sir, he said they stretched the chain across this spring, and camped there until the morning, and then run on.

Q. Did he say when that was?

A. Well, it was when they was running the line; I do not recollect as he said what year it was.

Q. What were they running the line for?

A. It was run betwixt the two States.

Q. What for?

A. I reckon to divide the two States, I do not know what else it was run for, I suppose that is what they run it for.

Q. Where did you live then?

A. I lived down across the river, my father did. I had no place then, only lived with my father; I worked for old Johnny Crane.

Q. Have you ever owned any land along the line?

A. Owned any?

Q. Yes?

A. No, I never owned any land close the line, never owned any close the line.

1883 For PLAINTIFF:

Q. Mr. Lewis, how long has Gabriel Friend been dead?

A. Well, I cannot tell you how long, but I reckon it has been a good many years; it must be 28 or 30 years since he was dead. I can't tell you just how many years it was.

Q. Well, how old a man was he at the time he came up here and swore to the line crossing the spring?

A. I can't tell you how old he was, he came walking with his cane. It has been built up some since I used to drink out of it.

Q. It is right here in town, the spring?

A. Yes sir, it is called the Notley Brown Spring, I think.

Q. Right back of where Mr. Notley Brown used to live?

A. Ugh hugh.

Mr. PRICE:

Q. Don't you know that that spring never has been recognized by anybody as the State line, did you ever know anybody to recognize that spring as being on the State line?

A. I do not know that I did; I do not remember that I did.

Further deponent saith not.
Signature waived.
Commission adjourned.

SANG RUN, GARRETT COUNTY, MD., *July* 19, 1902.

D. HARRISON FRIEND, called on the part of the State of Maryland, being duly sworn, says:

Direct examination:

Q. State your age, residence and occupation?
A. My occupation is farmer, my age is, I was born the 27th of March, 1825. I reside here at Sang Run, Garrett County,
1884 State of Maryland.
Q. Did you know John Friend and Gabriel Friend and William W. Hoye?
A. Yes sir.
Q. Are they living or dead?
A. Dead.
Q. What relation, if any, were John Friend and Gabriel Friend to you?
A. John Friend was my father and Gabriel Friend was my uncle.
Q. Was Gabriel Friend your father's brother?
A. Yes sir.
Q. When did your father die?
A. I think in 1849.
Q. Did you ever hear your father and your uncle, Gabriel Friend, say anything about laying out Military Lots?
A. I did.
Q. Please state what they said to you about their connection with the laying out of the Military Lots?

Objected to.

A. In reference to Virginia?
Q. Yes sir?
A. I understood them to say that in laying the soldier's lots off that they made sure that they would be on the Maryland side of the line, that soldiers could not be cheated in the land awarded to them.
Q. What connection did William Hoye have with the survey or laying out of the Military Lots?

Objected to.

A. I heard my father say that he was the surveyor when
1885 they located the Military Lots.
Q. Did you ever hear your father or uncle Gabriel say anything about whether the line to which they laid out the lots was recognized at the time as a boundary of the State?

Objected to.

A. As a settled line?
Q. Yes sir?

Objected to.

A. I understood them to say it was not a settled line.

Q. Do you know what connection your father and uncle had with that survey, that is, what part of the work they did?

A. No sir; I do not remember; it is rather my impression, I do not wish to write it down, it is my impression that as old citizens they went to show the country in which the surveyor operated.

Take the witness.

Mr. PRICE—Cross-examination:

Q. Your present residence is how far from the western boundary line of those military lots, the old Deakins line?

A. The military lots, well, I never knew it to be measured, Senator, but I would suppose it to be about three miles towards the west.

Q. Three miles about west of your residence to that line?

A. I think so.

Q. How long have you lived here?

A. Ever since I was born, except—this has been my headquarters.

Q. You were born then at this place where you now reside?

A. Yes sir.

Q. Was this place your father's residence at that time?

1886 A. Yes sir.

Q. Now, where did your father live during the time you recollect him?

A. He lived here.

Q. He lived here all the time?

A. Yes sir.

Q. Do you know how long before that he had lived here? Had he lived here all his life?

A. No sir, he was born on the Potomac River and my father moved to Friendsville below here, but after thirty years of age he lived here, this was his headquarters.

Q. Did your grandfather ever live here at this place.

A. Except to stay with my father, after grandmother's death.

Q. Where was your grandfather's residence as you understood it in 1789?

A. The time the Military lots were laid out, my father's residence?

Q. Your grandfather's?

A. Friendsville.

Q. Friendsville?

A. Yes sir.

Q. How far is that from the Deakin line along the western boundary of the Military Lots?

A. Well, it would be probably four or four and one-half miles.

Q. Four or four and one-half miles?

A. Well, probably it might be further.

Q. You did not understand that your grandfather was connected in any way, in any official way, with the running out of those lots?

A. No sir, I did not.

1887 Q. Was your father born at that time, the time those lots were laid out?

A. My father?

Q. Yes sir, John Friend?
A. My father was with the parties surveying those lots.
Q. How old was he when he died?
A. Died in his 86th year.
Q. And how old was your grandfather when he died?
A. My grandfather died before I was born. He was said to be 105 years old.
Q. Then you never heard anything from your grandfather about the laying out of these lots?
A. No sir.
Q. What you got was from your father alone?
A. My father and uncle.
Q. Gabriel Friend was your uncle?
A. Yes sir.
Q. It was your father and uncle, Gabriel Friend, who was with the surveying party?
A. I heard them say so.
Q. When did your uncle Gabriel die?
A. I could not give you the year that he died in.
Q. Did he die before or after your father?
A. Gabriel, I think, I am not sure, I think Gabriel died before my father died, I am not sure which died first.
Q. Did you know William W. Hoye?
A. Yes sir.
Q. What aged man was he as compared with your father and uncle Gabriel?
1888 A. He was not as aged.
Q. He was not as aged?
A. No sir.
Q. Where did he live?
A. Two miles above here, it is quite two miles.

Further deponent saith not.
Signature waived.

HOUSE OF TAYLOR FRIEND, GARRETT COUNTY, MD.

TAYLOR FRIEND, called on the part of the plaintiff, being first duly sworn, says:

Direct examination:

Q. State your age, residence and occupation?
A. My age is 51, residence Garrett County, Maryland. I am a farmer, which has been my occupation for the last several years.
Q. What official position, if any, do you hold in Garrett County at this time?
A. I am on the Board of County Commissioners of Garrett County.
Q. Do you know the tract of land in Garrett County called Cherry Hill?
A. I do.
Q. Where is said tract of land located, Mr. Friend?

A. Here, it is located right here, or a portion of it where we are, and lying west of us, most of it.

Q. Your farm is a part of the Cherry Hill tract?

A. 95 acres to the best of my recollection, Cherry Hill, ninety-five acres and some rods.

Q. Do you know the beginning of Cherry Hill tract?

A. I know the beginning as shown to me by my father.

1889 Q. Who was your father?

A. C. W. Friend.

Q. Is he living or dead?

A. He is dead.

Q. Did you point out the beginning of Cherry Hill Tract to W. McCulloh Brown, the surveyor in this case, for the State of Maryland?

Objected to.

A. I did.

Q. What is that beginning, how is it marked upon the ground?

Objected to.

A. It is an ash tree on a rising piece of ground.

Q. An ash tree?

A. Yes sir, the tree is down now, but it was standing when I pointed it out.

Q. Mr. Friend, did you point out any other objects to Mr. Brown in connection with the survey he made in this case?

A. I pointed out to him a fence that was supposed to be the old line, claimed to be, or supposed the old line of Virginia, the supposed line, on old fence, or rather I had taken the fence down.

Q. Was that on your farm?

A. It was on my farm; I sold the piece off. Yes sir, it was on my farm.

Q. What old line was this supposed to be?

A. It was supposed to be the old Virginia line, as they called it, supposed to be the old Virginia line.

Q. Was it supposed to be the old Deakins line?

A. I believe that was the name, the old Deakins line, the first line that we know anything about.

1890 Q. Did you know it as a continuous line, or did you only know it at this one point?

A. Where this fence was at the time?

Q. Was there anything to designate or define that line on the ground continuously beyond this fence?

A. Nothing as I know of, nothing more than it had been shown to me as the old Virginia line where this fence stood.

Q. Could you trace the line from this fence in either direction?

A. I could not.

Senator, take the witness.

Mr. PRICE—Cross-examination:

Q. Where we are now, taking these depositions, is at your residence, Mr. Friend?

A. Yes sir.

Q. How long have you lived here?

A. Well, since I came here, it has been about 24 or '5 years. I was born, well I was not born here, but raised here until I was about a young man, and then afterwards we went to another farm up here in West Virginia, to Preston County.

Q. So that you were raised here right at this point where we are now?

A. Yes sir, you might say that I was raised here. I was never far away.

Q. How far is this house from that old fence that was on the State line as you pointed it out to Mr. Brown?

A. I could not tell you exactly, unless I get the papers and look; I could tell exactly.

Q. Give us as near as your judgment would say?

A. I suppose it would be something near a quarter of a mile from here up.

1891 Q. Is that old fence a line east or west of this house?

A. West of this house.

Q. About a quarter of a mile west of this house?

A. Yes sir, something like a quarter of a mile from this house.

Q. Do you own any of the land west of that old fence?

A. I did, not now.

Q. How long did you own the land lying west of that old fence?

A. Well, now, that is pretty hard for me to tell, unless I would look at some papers, I would suppose, though, that I owned it ten years.

Q. Before you sold it?

A. Before I sold it.

Q. When did you sell it and to whom?

A. I sold it to Leannius Deetrick.

Q. When did you sell it to him?

A. Well, now, that is pretty hard for me to tell, Mr. Price.

Q. As near as you can get at it, I don't care about absolute accuracy?

A. I suppose it is ten years anyhow.

Q. Ten years ago?

A. Yes sir. I have lived here about 34 years.

Q. Was it before or after Julius K. Monroe ran the line through here?

A. Before or after I sold the land?

Q. Yes?

A. It was before I sold it.

Q. How long before that?

A. It must have been about four years ago you ran that line.

1892 Q. It was four years ago when Mr. Brown ran here?

A. It was in 1894 Mr. Monroe ran the line, that has been seven years ago then, six years ago—eight years ago.

Q. Was it before that time?

A. You say that I sold that land?

Q. Yes?

A. I must have sold it before that time.

Q. You made a deed to Mr. Dietrich for the land?

A. Yes sir.

Q. Where did you have it recorded?

A. In Kingwood.

Q. Kingwood, Preston County, W. Va.?

A. Yes sir.

Q. Was that title deed for the land recorded in Kingwood, Preston County, W. Va.?

A. Yes sir.

Q. Where did you get that title from?

A. From my father.

Q. Who was your father?

A. C. W. Friend.

Q. And you got it when?

A. I think it must be 24 or '5 years ago I got that title.

Q. Now, the land you own east of that old fence and line, you got it from whom?

A. From my father, C. W. Friend.

Q. Where was the deed for that recorded?

A. Recorded in Oakland, Garrett County, Maryland.

Q. Then, Mr. Friend, you, by having your deeds, the one recorded in Preston and the other in Garrett County, Maryland, rec-

1893 ognized that old fence as the boundary line between the two states, did you not?

A. Well, I paid the taxes for that over in Preston County, and the other was Maryland title and I paid taxes for that in Garrett County.

Q. You say that the title west of that was a Virginia title?

A. Yes sir.

Q. What do you mean by that?

A. It was a West Virginia title, recorded in Kingwood.

Q. Was the land patented under a Virginia title up to that line?

A. To give my understanding, it had been first patented by a Maryland title, Cherry Hill, and this was a piece of land owned by Andrew Teats at one time, and my father bought it of him; it was a patent laid down by West Virginia, Cherry Hill.

Q. Do you know who took out the Virginia patent?

A. I cannot say.

Q. You cannot say how many acres in it?

A. Not in the tract, I cannot tell. There was one of seven acres and some rods, and my father owned it.

Q. Has there been any resurvey on the Cherry Hill patent on the Maryland side?

A. Well, it was surveyed, the part in Maryland, I had it surveyed since I came there.

Q. I meand, had there been any resurvey and grant issued on that, like you do under the Maryland law?

A. I believe they had at one time.

Q. Do you know what the new patent was called?

A. Yes sir.

Q. What?

1894 A. There had been a patent granted to Spurgeon, I believe, and it was called Whippoorwill.

Q. Whippoorwill?

A. Yes sir, this part of Cherry Hill that lies east of that old fence.

Q. Where is that beginning ash tree that you point out to Mr. W. McCulloh Brown?

A. Where is it?

Q. Yes?

A. Well, it is about, I would suppose near a quarter of a mile from here, lying west of us, pretty near west of us, I would say a quarter of a mile.

Q. How was it located with reference to that old fence you have been speaking of?

A. It is to the left of the old fence, that is out in the woods, away from the old fence, I suppose.

Q. East or west of it?

A. It is not west of it, it is south where the old fence extended nearly parallel with the line, but the fence didn't extend out that far to where this tree stood.

Q. Do you mean that this tree would be on a line with that fence if the fence were extended?

A. Yes sir, something near it, I think. The tree may be standing a little bit to the east, but it is not very much, I would say either way.

Q. North or south?

A. South of the old fence.

Q. Now, how was that tree marked?

A. Well, now, that is pretty hard for me to tell, there had been a good deal of chopping and cutting on it.

Q. Is it there now?

1895 A. No sir, it has fell down.

Q. Is the trunk there?

A. I would suppose the trunk has been burned.

Q. How long since it fell?

A. I suppose it has been two years since it has been down.

Q. And you cannot give the marking on the tree?

A. No sir because it was chopped up a good deal.

Q. What chopped it?

A. I cannot tell you that.

Q. You didn't?

A. No sir, I didn't.

Q. You do not know who did?

A. No sir, I do not know who did. That tree had been shown to me by a good many and I had helped to carry the chain from that tree several times running there.

Q. I believe you said it had been shown to you also by your father?

A. Yes sir, he showed it to me as the beginning of Cherry Hill. He owned the land about it.

Q. You know, don't you, how corner trees are marked?

A. I well, I am not very much of a surveyor, but I have seen some trees marked as corner trees.

Q. How are they?

A. A great many of them around here on four sides.

Q. With how many hacks?

A. I could not tell you.

Q. What is the difference between the marking of a corner tree and line tree?

A. I am not able to tell you just exactly that, I never paid
1896 much attention to them.

That is all.

Further deponent saith not.

Signature waived.

SAMUEL M. FIKE, called on the part of the State of Maryland, being first duly sworn, deposes and says:

Direct examination:

Q. State your age, residence and occupation?

A. My age *was* 67, I live across here in Maryland, Garrett County. I am a farmer.

Q. Do you know Abram J. Thomas?

A. Yes sir, I know him.

Q. Is he living or dead?

A. He is dead.

Q. When did he die?

A. I cannot tell you that.

Q. Well, about how long ago?

A. About two years, as near as I can tell you.

Q. Mr. Fike, did you point out any object on the ground to Mr. Brown, the surveyor in this case, when he was making the surveys?

A. Well, I come there, and I think Mr. Monroe wanted me to go with them and show him where the old Virginia line was, and I went with them and I showed them where the old line was.

Q. What did you point out to Mr. Brown?

A. I didn't point anything out, only the fence there that was on the line.

1897 Q. How much of a fence was there?

A. A good sized fence, and a pretty long fence; it runs through betwixt me and Marshall Fike's and George Sickle; Mr. Monroe knows.

Q. What old line was that?

A. Why, it was the old supposed Virginia line that I was always told, advised it was the old supposed Virginia line.

Q. Did they give it any particular name?

A. Well, some of them did say it was the Fairfax line, some of the old fellows, you know.

Q. Did any of them call it the Deakins line?

A. I do not remember; I do not remember; I worked along the line on each side for farmers who owned land on both sides, and they always pointed it out that supposed line.

That is all.

Mr. PRICE—Cross-examination:

Q. Mr. Fike, how far do you live from here?

A. From here straight across, about two miles and a half.

Q. About two miles and a half?

A. Yes sir.

Q. In which direction?

A. North, near north.

Q. Which side of that old Virginia line do you live on, east or west?

A. On the east side.

Q. How far from it?

A. Well, I have never measured it.

Q. No?

A. It is, I don't think over 100 rods.

Q. How long have you lived there?

1898 A. I have lived at that place for 34 years.

Q. Do you own the land there?

A. Yes, sir.

Q. Do you own the land up to the old line?

A. No, there is a vacancy betwixt the old Virginia line and the lots.

Q. You own some of the Military Lots, do you?

A. Yes sir. A neighbor of mine owns the vacancy and also the land on the Virginia side.

Q. Who owns that vacancy?

A. Marshall M. Fike.

Q. Marshall M. Fike?

A. Yes sir.

Q. How wide is that vacancy between the Military Lots and the old line?

A. I never seen it measured but the owners told me 48 rods.

Q. Now, this fence, this old fence that you speak of, how long had it been there?

A. Since they put the fence there, that has been. It used to belong to one man and it come in different hands and they put this fence there, but the fence south of it has been there for many years.

Q. How many years?

A. It has been there for forty years.

Q. And is this new fence that you speak of made the division fence is that in the line of the old fence, south of it?

A. Yes sir.

Q. What direction does that fence run?

A. It runs north and south. North and south.

Q. Now, did you say that Van Sickle owned lands on both
1899 sides of that old line?

A. No, John Van Sickle, it was a corner, and he owns the land there, a corner of N. Fike's next, there is a number owns west of it.

Q. I understood you to say that there was a man who did own the land on both sides.

Q. That was Zachariah Van Sickle.

Q. What I want to ask you is whether that land, on the west side of that old line or fence, was held under a Maryland or Virginia title?

A. Under a Virginia title.

Q. And the land held east of it by a Virginia title?

A. Yes sir. I knowed the parties.

Q. Did you see where Mr. Julius K. Monroe ran a line in 1894 along there, the first line run in this case?

A. I think I did. He run southwest, I think, but I did not look; I went on up, that is as far as I know.

Q. Where did Abram J. Thomas live?

A. He lived not very far there from the Mud Pike.

Q. On which side of the old line?

A. Well, I cannot tell that precisely which side he lived on. I never was along from there where it was run, you know.

Q. Did Abram Thomas live, or claim to live, in Maryland or West Virginia?

A. In Virginia, as well as I know; I never knew him to vote in Maryland anyhow; I think he claimed his residence in Virginia on account of he would be in the same district with me.

Q. Mr. Fike, are there any public roads there between the old line you have been speaking of and the Michler line, west of it?

A. Public road?

1900 Q. I mean a county road?

A. Yes sir; I do not know whether they have it on the County or not, but it is a county road.

Q. Now, what I want to ask is, which County worked the roads up to this old line and west of it?

A. Maryland.

Q. On the east?

A. On the east.

Q. And which worked it on the west?

A. Virginia; I worked on both, so I can answer that question pretty well.

Q. Maryland then never worked the road beyond the old line?

A. Not as I know of; if they did, I do not know it.

That is all.

Further deponent saith not.

Signature waived.

EDWARD JONES, called on the part of the plaintiff, being first duly sworn, says:

Direct examination:

Q. State your age, residence and occupation?
A. 55, I live in Virginia, and south of the Michler line, farming is my occupation.
Q. Do you know where a tract of land called Elder Spring is, Mr. Jones?
A. That is what I have been informed I live on.
Q. The Elder Spring?
A. Yes sir.
1901 Q. How much of the Elder Spring do you own, Mr. Jones?
A. 100 acres.
Q. From whom did you acquire title to the portion of Elder Spring you own?
A. From Thomas Bruce's widow, Eliza Lewis.
Q. Where did you have your deed recorded when you got your title from Mrs. Bruce?
A. Kingwood.
Q. Did you ever have it recorded at Oakland?
A. No sir.
Q. You live east of the Michler line?
A. No sir.
Q. You live west?
A. Yes sir. I might state before I did have my deed recorded there they did not pay taxes for but 40 acres in Maryland; anyhow they had went to Oakland to have some permission in some way in reference to having their children sent to school, and paid the personal property tax on sixty acres.
Q. In Virginia?
A. In Virginia.
Q. And paid taxes on the remainder of the 100 acres in Garrett County?
A. Yes sir, that is before my time.

That is all, Senator.

Mr. PRICE—Cross-examination:

Q. Mr. Jones, do you own all the Elder Spring Tract?
A. No sir, you understand there is different ones on part of this Elder Spring tract.
Q. Do you own all that line west of the old State line?
1902 A. No sir.
Q. Who else owns any in there?
A. Why a party by the name of Spills, George and Thomas Spills.
Q. Where do they pay taxes?
A. In Virginia.
Q. In West Virginia?
A. Yes sir.
Q. At Kingwood?
A. Yes sir.

Q. To the Sheriff of Preston County?

A. Yes sir.

Q. And do you pay your tax on the land lying west of the old line in Preston County also?

A. Yes, west of the Michler line.

Q. Do you know anything about the old Virginia line, called the Deakins line, where that was?

A. Not anything.

Q. Then you only speak of the Michler line?

A. Yes sir.

Q. Does it run through the Elder Spring tract, as you understand it?

A. Yes sir, that is the way I understand it.

Q. Now, I did not understand you about their getting permission to do what?

A. Why, the trouble was at that time, you know, as they informed me there was some trouble in schooling their children. They come down to what we call the Ira Friend Place, and they showed these things to them, as I understand it, I was not there; I heard different ones stating the matter, and they struck this off, as I under-
1903 stand it, that they would have to pay no money but for forty acres and paid personal taxes for 60 acres and then they went to Virginia.

Q. They arranged it then that they would pay their taxes on the 60 acres and their personal taxes in Virginia and send their children to school there?

A. Yes sir.

Q. That was 60 acres of the Elder Spring tract?

A. Yes sir.

Q. Do you know when that arrangement was made, was it after the Michler line was run in 1859?

A. Of course I don't know just when it was run; it must be; there are gentlemen here who recollect that who will be able to testify; that is the way I understand it, it was after that.

Q. You vote in West Virginia?

A. Yes sir.

Q. How long have you lived where you live now?

A. About twenty years, a little better I believe.

Q. You bought from Bruce's widow?

A. Yes sir.

Q. Did you build the house you live in, or was it there when you were there?

A. No sir, I lived in the same house.

Q. The same house was there when you bought the land?

A. Yes sir.

Q. Was it an old house?

A. Yes sir, an old house when I bought it.

Q. And it was people who lived in that house, was it, with whom the arrangement was made about sending children and paying taxes on Virginia side?

1904 A. Yes sir, that is the way I understood it with them.

That is all.

And further deponent saith not.

Signature waived.

MARSHALL FRIEND, called on the part of the plaintiff, being first duly sworn, says:

Direct examination:

Q. State your age, residence and occupation?
A. 53, I am living on a tract of land held now by a Virginia title in the disputed territory. I am a farmer.
Q. Do you know of a tract of land in Garrett County Maryland, called Elder Spring?
A. Yes sir.
Q. Do you own any part of Elder Spring?
A. Fifty acres.
Q. Do you know where the end of the second line of your deed is?
A. I do.
Q. What is that?
A. A little stone pile.
Q. Did you point out to Mr. W. McCulloh Brown the surveyor in this case that corner?
A. I did.
Q. Who joins up to you there?
A. Why, Jones, Edward Jones.
Q. Do you know what corner of his tract it is?
A. I don't.
Q. He owns a part of the Elder Spring Survey?
A. Yes sir.

That is all.

1905 Mr. PRICE—Cross-examination:

Q. Mr. Friend, where is your house located that you live in?
A. Located on this land, that is held by Virginia title.
Q. Between the Elder Spring and the old Virginia line?
A. Yes sir, the old Virginia line.
Q. Is it west of the Elder Spring tract?
A. It is east.
Q. East?
A. East of the Elder Spring tract.
Q. Then the old Virginia line is east of the Elder Spring tract?
A. Yes sir.
Q. Does Elder Spring tract lie entirely west of the old Virginia Deakins line?
A. Yes sir.
Q. Do you own the land between the Elder Spring tract and the old Deakins Virginia line?

A. Yes sir, I do.
Q. How long have you owned it?
A. About 24 or '5 years.
Q. Where did you get it from?
A. Taylor and I bought the Virginia part held by Virginia deed, bought of John James.
Q. And where did John James get it?
A. Now, that there, you are ahead of me, but I think he bought of old Mr. Glover; I am not positive about that.
Q. Does that title to that strip between the Elder Spring and the old Deakins line come on a Virginia patent, or Maryland?
A. Let me explain, where I live, east part of Elder Spring, is a Virginia title, 160 acres; 50 acres of the Elder Spring, lying
1906 west of the Virginia title, is Maryland title.
Q. You own fifty acres of that?
A. Yes sir.
Q. But the land you live on, between that and the old line, is Virginia title?
A. Yes sir.
Q. Do you know who it was patented the original?
A. I think Henry Deal, I think it is Henry Deal survey.
Q. Do you own all the land lying between the Elder Spring and the old line, or does some one else come in?
A. Some one else comes in.
Q. South of you, or north?
A. South, Lelvy Friend.
Q. Where did he derive his title from?
A. From John H. Friend.
Q. Is that a Virginia title?
A. It was patented by Virginia title and his father made it a Maryland title, originally patented in Virginia.
Q. What do you know, Mr. Friend, of that old Virginia line there, what was there marking it along there?
A. Nothing but fences and where old people told us it went along.
Q. Has it been the tradition there since you have known it?
A. It has been the sayings with them it was the old Virginia line.
Q. What is there now on the line east of you?
A. My fence is right on the line.
Q. And the old line, has it been known and recognized by tradition ever since you have known it?
1907 A. Yes sir.
Q. Who owns up to that, on the Maryland side?
A. William Friend owns it, I believe, and Roy Chisholm, right below.
Q. You vote in West Virginia?
A. I voted for quite a while in Virginia and I have been voting for four or five years in Maryland. Up to that time in Virginia.
Q. Did you build the house that you live in?
A. I did.
Q. How long has it been there?

A. About twenty odd years ago, twenty-one years ago, maybe more.

Q. Was there any house on that strip before?

A. No sir, I built the first house, maybe it has been 24 years ago.

Q. Now, Mr. Friend, is it not a fact that the Virginia titles extend all around this Elder Spring tract on the west side of it?

A. As originally granted all around it?

Q. Yes sir.

A. Let us see. No, now there is on the south Bittinger comes in there. Well, no, he does not extend there as it was originally patented.

Q. Virginia patents were all around the Elder Spring tract, weren't there?

A. Yes sir.

That is all.

For PLAINTIFF:

Q. Do you know the date of the Virginia patent that you own?

A. I do not, but it is something near 100 years.

1908 Q. Near 100 years?

A. Yes sir.

That is all.

Further deponent saith not.

Signature waived.

JEREMIAH BITTNER, called on the part of the State of Maryland, being first duly sworn, says:

Direct examination:

Q. State your age, residence and occupation?

A. 67. I reside in Garrett County. I am farming.

Q. Do you know a tract of land in Garrett County called Elder Spring?

A. Yes sir, I do.

Q. Do you live on or near it?

A. I own a part of it. I have got a deed for 92 acres and a quarter.

Q. Did you point out to Mr. Brown, the surveyor, when he was making the locations in this case, any of the corners of the tract of land called Elder Spring?

A. Yes sir, there was a man come there and I showed him my deed, and I showed him the corner of the second line of the Elder Spring tract.

Q. What is the corner of the second line of the Elder Spring tract?

A. It is a white oak stump standing there now. It was a white oak tree and I chopped it down. Marshall Friend joins there and he agreed with me we would chop it down, it made so much shade, the stump is there; the tree made a great deal of shade.

1909 Q. And you pointed that out as the end of the second line of the tract of land called Elder Spring?

A. Yes sir, that is what I was always informed and my deed called for that, as near as I can remember, my deed called for that.

Q. Who told you that that was the end of the second line of Elder Springs?

A. Well, I think as near as I can remember, if I brought my deed along—it appears to me it was in the deed, the second line of the Elder Spring tract.

Q. But who told you that that white oak tree was the end of the second line of the Elder Spring tract?

A. Well, I could not remember about that.

Q. How long have you lived on the Elder Spring place?

A. I have owned that farm, it must be about 37 years, as near as I can remember; when the War broke out I got that farm; it is 37 years, I think.

Q. Your deed is recorded at Oakland?

A. Yes sir; yes sir. I was going to state, I bought, there is one 60 acres of that tract that was off the Elder Spring tract, as near as I can remember, and then there was 17 acres and a quarter I bought, John and George Evans bought a piece, George Evans used to own that farm, several years ago, I think about 17 acres and a quarter off John Friend Farm, and 15 acres of the Nelvey Friend Farm, and there was 60 acres that was a Maryland title ever since I knowed it and I have knowed it for 50 years. John and George Evans used to own that farm, and then Henry Thomas bought it; then Amos Thomas his brother bought it of Henry, and I got it of Amos Thomas—it was in my father's name, Daniel Bittner and Phoebe his wife.

1910 Q. The John Friend farm is in Maryland?

A. He has a Maryland title I guess now for it, a Maryland deed; I could not say positive about that, but I understood it was a Virginia title, a Virginia warrant, but I could not say about that.

Q. Do you know a tract of land called Evans land, lying west of John Friend's place?

A. Well, that is the farm, I guess, I lay rather northwest; that belonged to Evans, did it?

Q. They took it up.

A. I think; that is what I understood. Then Pritchard farm is a part of Elder Spring tract, it lays across the Michler line further on. As near as I can remember Thomas Lewis used to own the farm adjoining me, one corner of it, he paid his taxes in Garrett County, in Allegany County at that time, it was.

That is all.

Cross-examination by Mr. PRICE:

Q. Mr. Bittner, this 17 acres that you got of John Friend?

A. I didn't buy it myself, John Friend, it was John and George Evans.

Q. Your father bought it?

DARK PAGE BLE

A. My father, yes sir, got—they traded farms, the farm we used to own, my father owned below Selbysport, about a mile from Selbysport and on the east side and they got me to trade this farm. We traded for that farm.

Q. Where does this 17 acres lie with reference to the Elder Spring tract?

A. It lays east; it lays east from the Elder Spring tract; it lays between me and John Friend, where John Friend now lives, rather more east.

Q. You own the seventeen acres?

1911 A. Seventeen and a quarter.

Q. Does it lie between the Elder Spring tract and the old Maryland Deakins line, the old Deakins line?

A. Yes sir, southwards of the old Deakins line; there was a good many people told me that the old Deakins line come across by John Friend's house; Henry Thomas lived there. That has been some forty years ago. They said it come by the house. I never seen any marks, but some said it was up further running through my farm, said some.

Q. Well, this 17 acres was first taken up under a Virginia title, was it not?

A. Well, indeed I could not tell you about that.

Q. There was no Maryland title to it till George and John Evans got a Maryland title?

A. I could not say about that.

Q. How long ago was that?

A. It must be 40 years, or maybe more. Then they got fifteen acres of the John Kelley farm; it used to be the John Kelley farm, the Melvey Friend farm.

Q. Where is it now located?

A. It lays east, adjoining my farm; they got 15 acres of it to my farm, and there was 15 acres of Elder Spring tract and the whole shebang will make 92 acres and a quarter. It is a Maryland title, Maryland deed.

Q. Those 17 acres and 15 acres were not Maryland title?

A. Not at that time—I could not say.

Q. Wasn't that your understanding?

A. The 15 acres belonged to that farm, Melvey Friend got, he had a Virginia title. John Friend has a farm, they also informed me taken up by a Virginia title.

1912 Q. Where does he live now?

A. He lives there at what they call the Keller Glade farm near the new church.

Q. It is close to you, adjoining farm with him?

A. As far as Samuel Falkner owns a farm on the west side of John Friend, which is of the Elder Spring tract, which he has got a Maryland title for, on the west side of John Friend.

Q. Does he claim Maryland or Virginia?

A. He claims Maryland and votes there and sends to school in Maryland.

Q. How long has he done that?

A. It must be 34 or 35 years to the best of my knowledge.
Q. And have you always voted in Maryland?
A. Yes sir.
Q. Always?
A. Yes sir.
Q. How long?
A. Well, I voted in Maryland ever since I had a vote and I am 67 years of age; the first vote I voted at Selbysport when I was 21 years of age.
Q. Selbysport?
A. Yes sir; it is now Friendsville. I always have voted in Garrett County and at that time I was in Allegany County; it is in Garrett County now, but I was a resident all my life of Garrett County.
Q. Mr. Marshall Friend, who lives east of you, claims to live in West Virginia?
A. He lives right northeast of me adjoining my farm.
Q. He lives further east then you do?
1913 A. Yes sir and he has got a fifty acre lot of land I am well acquainted with; a man by the name of Sickle used to own it, a fifty acre tract; he has got Maryland title; he pays taxes for that in Garrett County?
Q. Now?
A. Yes sir, there is a Maryland title for that. That is a part of the Elder Spring tract.
Q. This tree that you showed some gentlemen there, what kind of a tree was it?
A. Whiteoak tree, the stump is there now; that is nearby my house, that is not over 80 yards from my house.
Q. Which direction?
A. Why, it lays, it stands north from my house, and there is the beginning of my farm.
Q. Is it directly north?
A. As near as I can recollect it, directly north; it goes a little south.
Q. Has it a mark on it?
A. Marked tree, it has marks out on the tree.
Q. What are the marks?
A. Notches cut in, as near as I can remember, two or three marks, notches, cut in there by an axe.
Q. On more sides than one?
A. I could not tell you about that; as near as I can state it was marked different places around, but it is called a corner tree of my farm, the beginning of my farm.

COUNSEL FOR PLAINTIFF:

Q. Mr. Bittner, is this the gentleman that you pointed out that tree to, the whiteoak stump at the end of the second line of
1914 Elder Spring (Pointing to W. McCulloh Brown, surveyor.)
A. I think he is the man.
Q. Do you know him by name?
A. I cannot say positively, but he appears to me the man.

Q. It is W. McCulloh Brown?

A. He is the man who called for my deed; I brought it out to the whiteoak stump.

That is all.

A. You mean asked me how far it was up to the Michler line, and I told you about 70 or 80 rods, as near as I can remember.

Q. Do you know of any lands west of the Bittner land?

A. There is 100 feet of my farm, one way is 137 rods long, and it cuts off about four rods, or maybe five at the far end, at the south end, my farm runs narrow, to a narrow point, running this way, and it cuts off a small scope all along, that is the Michler line, but that is all the Elder Spring tract.

That will do.

Further deponent saith not.

Signature waived.

Mr. THOMAS SAVAGE, called on the part of the plaintiff, being first duly sworn, says:

Direct examination:

Q. State your age, residence and occupation?

A. I was born the third of February, 1827, and I am 73, I reckon. I live about a quarter of a mile of Fearer Post office, Garrett County, Maryland. I was a farmer.

1915 Q. Did you point out to Mr. Brown, the surveyor, when he was locating the lines in this case, any object on the ground?

A. Any object?

Q. Yes, a tree or anything like that?

A. No, I do not know as I did; I pointed out the beginning, a poplar.

Q. The beginning of what?

A. The Nettle Ridge tract.

Q. How many acres does the Nettle Ridge tract contain?

A. To the best of my recollection 138.

Q. How long have you known that beginning, Mr. Savage?

A. Ever since I was big enough. I lived there with my father and he showed me that since I can remember; I remember that beginning, and I got a piece of the land off of my father, 38 acres, and we commenced at that beginning and run it out.

Q. You say that your father pointed it out to you?

A. Yes sir.

Q. Is your father living or dead?

A. He is dead.

Q. What was his name?

A. John R. Savage.

Objection to statement of witness that his father pointed out tree to him.

Q. Did your father own the Nettle Ridge tract?
A. Yes sir.
Q. Do you know from whom he bought it?
A. He bought it from my grandfather Friend.
Q. What was his name?
1916 A. John Friend.
Q. John Friend?
A. Yes sir.
Q. Do you know from whom your grandfather Friend bought it?
A. No sir, not as I recollect of.
Q. Was your grandfather Friend the father of Mr. D. Morrison Friend of Sang Run?
A. Yes sir.
Q. Your mother was a Mrs. Friend?
A. Yes sir, yes sir.
Q. Oh, yes.
A. My mother was a Friend.
Q. Mr. Savage, please look at the plat now shown you and state where on that plat is the beginning of the 138 acre tract and how it is marked?
A. It lays that way, I guess. I do not know much about these corners, but I know that and that (indicating.)
Q. Well, what is this corner here?
A. Is that the beginning?
Q. That is what we want you to say, the beginning?
A. The way it lays, it commences down at the run, and Mr. Brown run this line up here to a chestnut, I knew where they both stand. That is north.
Q. Now, then, where is the beginning of the tract marked on this plat?
A. It must be the north.
Q. How is it marked on the plat?
A. That is the letter R.
Q. It is marked by the letter R?
1917 A. Yes sir.

That is all.

Mr. PRICE—Cross-examination:

Q. That is a Virginia title, is it not?
A. Yes sir, so it seems.
Q. It is, is it not?
A. Yes sir, yes, in the first place there was a party in Richmond, Virginia——
Q. Who was it patented to?
A. Well, I have not got the patent.
Q. What was your understanding?
A. My understanding was before there was any land office in Maryland this land was patented in Richmond, Virginia.
Q. Who took it up?
A. I cannot say, because I have not got the patent.
Q. Did Francis Deakins take it up?

A. I am not certain; I never read the patent.
Q. Is it not called the Deakins 138 acre tract?
A. If I had seen the patent—I am certain I never saw the patent.
Q. How far is that poplar, that beginning poplar, from the western boundary of Garrett County, Maryland, the old line?
A. The old line, Preston County?
Q. The western boundary of Garrett County, the old line between Preston and Garrett I mean the old line?
A. Straight across it would be pretty near a mile, I judge from where the old line ran across.
Q. Do you know the old Virginia line?
A. Yes sir, I know where they used to work to.
Q. Worked the roads?
1918 A. Yes sir.
Q. Where is it?
A. It is over on the hill, above the top of the hill, above where Widow Thomas lives.
Q. Anything marked there?
A. No, not that I know of.
Q. Whose land runs up to it on the Maryland and Virginia side?
A. Mrs. Thomas, Alex. Thomas' widow, she lives in right below.
Q. Does Evans own a tract in there?
A. Yes sir, yes—he did own a tract of land, but he sold it, George Evans.
Q. Who did he sell it to?
A. Why, to——
Q. Bittner?
A. No, Frazee, George Frazee.
Q. Now, does that tract now run with the old State line?
A. Yes sir, I think it does.
Q. How many acres in it?
A. I heard them say there was about 30 acres in it, in that piece of ground.
Q. How long have you known that old State line there?
A. Well, I helped to work on that road for a good many years back.
Q. Is there a road runs across the line there anywhere in that neighborhood from the Maryland to the Virginia side?
A. Yes sir, there is a road comes away out there past Sam Renninger's.
Q. What was it you said you worked in there?
A. The Morgantown road. I helped to work that road years ago, up to this hill where the old line was.
Q. You were working under Maryland?
1919 A. Yes sir.
Q. Then did the Virginia authorities work up to this side of that line?
A. Yes sir, I believe they did, as far as I recollect.
Q. What part of that 138 acres do you know, where does it lie, eastern part or western part?

A. Western part, commences at that beginning and runs up 50 acres of it.

Q. How long have you owned it?

A. I cannot say exactly; I know I have had a deed for it—I disremember;—I got a deed for it for 50 acres and some few perch.

Q. Have you had it long?

A. Yes sir, a good many years; I have been living there about 56 years.

Q. You got it before the war then?

Q. Yes sir.

Q. And you got it from your father?

A. Yes sir.

Q. Your father's name was what?

A. John R. Savage.

Q. And your mother's name?

A. Kern Friend.

Q. And she was a sister of Mr. Harrison Friend?

A. Yes.

Q. Lives over here at Sang Run?

A. Yes sir.

Q. Has that land ever been resurveyed and patented from the State of Maryland, the land office?

1920 A. Well, I cannot tell you that.

Q. Don't you know whether you have a Maryland patent for it or not?

A. No sir, I don't.

Q. And you think the only title you have is the old Virginia title taken up originally?

A. Well, I do not know.

That is all.

Further deponent saith not.

Signature waived.

TAYLOR FRIEND, recalled.

For PLAINTIFF:

Q. Mr. Friend, look at the plat now shown you and state, if you will, where and how on said plat the beginning of the tract called Cherry Hill is designated, as you pointed it out to Mr. Brown?

A. Right here (indicating.)

Q. Kindly designate it?

A. At G there.

Q. Black letter G?

A. Yes sir. Mr. Brown said there was some lines here, the ash tree, the beginning of this land is a little bit east of this fence. The line here, it stands a little, but east, as I told you before down here a few rods. That line—here is the point right here, that fence. The ash tree stands out here away from this fence. That old proposed line does not extend out to the beginning and the ash tree stands a little bit east of where that supposed line would extend if it extended.

It is a little bit east. And then I ran all those lines and corners clear around but right there the ash tree is.

Q. At the letter G?

1921 *Q.* I cannot see the letter G, it looks a little more down here (indicating).

Q. G marks the circle?

A. Then it would be right there, the line stands a little east of that old supposed line, if that dotted line represents it.

Q. That does not represent it. What I wanted to ask you was the beginning of Cherry Hill?

A. It is right here, right there where the corner is; then the old supposed line, as I showed you, would be to my judgment, would be a little bit up.

Q. How is the beginning point marked?

A. By the black letter G.

Counsel for State of Maryland object to all testimony of witness just preceding except that relating to beginning of Cherry Hill, as being irresponsive to question.

Cross-examination by Mr. PRICE:

Q. I think you said that was a tract called Whippoorwill and resurveyed on Cherry Hill?

A. Yes sir.

Q. Does that Whippoorwill survey run up to the old supposed line?

A. Yes sir.

Q. And stops there?

A. Yes sir, the beginning of it on that supposed line.

That is all.

Further deponent saith not.

Signature waived.

1922 FRIENDSVILLE, GARRETT COUNTY, MD.

SAMUEL FALKNER, called on the part of the plaintiff, being first duly sworn, says:

Direct examination:

Q. State your age, residence and occupation?

A. I am going on 50 years old; I live in Maryland, Garrett County, and farm and do anything.

Q. Do you know a tract of land called Elder Spring, in Garrett County?

A. Yes sir.

Q. Do you live on part of the tract?

A. I stay on part of it.

Q. Do you know the beginning of a tract of land called Elder Spring?

A. I know the beginning, it was called the beginning; it was showed me, old John Kelley was the first man, I guess about 1858

or '9, along there some place, and then about 1867 or '8 old Grandaddy Sisler came there and there was a buckwheat and tobacco house and he showed it to me, a black gum and white oak was there at that time, higher than up here to the porch (indicating).

Q. Is John Kelley and old Mr. Sisler now living or dead?

A. Dead for many years. Grandaddy Sisler was then up in 80; it was practically the last time I ever saw the old man.

Defendant objects to testimony as to statements made to witness by Kelley and Grandaddy Sisler.

Q. What kind of timber, did you say; is that the beginning of the tract called Elder Spring?

A. That is what they told me was the beginning of the tract called Elder Spring.

1923 Q. What kind of timber is there?

A. A black gum tree and a little bit of white oak stump standing there yet, I think there is a little piece of that there yet, just enough of it to see. I do not know whether you could tell, unless you got on it, what it was. When he showed it to me it was more.

Q. Did you point out the beginning of the Elder Spring tract to Mr. Brown, the surveyor in this case, at the time they were making that survey?

A. Yes sir, I pointed it out to Mr. Brown.

Q. In this case?

A. Yes sir.

Defendant objects to last question and answer.

Q. Please look at the plat now shown you and state where on said plat is the beginning of Elder Spring and how it is marked?

A. Right in here some place. I cannot see well enough.

Q. At that letter?

A. Right there some place, in here, was the beginning of Elder Spring tract of land, as near as I can see.

Q. You say you cannot see the name of the letter?

A. No.

(Counsel for State of Maryland says that the letter to which the witness has pointed is on the plat black letter F.)

Q. Is that right?

(The witness for the State having stated that he could not distinguish it.) How much of the Elder spring tract did you own?

A. Well, sir, old Grandaddy Sisler told me 114½ in my part.

Q. Do you know where the Michler line is?

A. Yes sir.

Q. Does your land extend west of the Michler line?

1924 A. Yes sir.

Q. What part of the tract do you own, north or the south?

A. I own north end of it.

Q. The north end or the south end?

A. The south end, now I am getting at it. The south end of the tract.

Q. How long have you had that property?
A. Well sir I bought it in the spring of 1864.
Q. In the spring of 1894?
A. Yes sir.
Q. Where did you pay your taxes?
A. I paid my taxes in Maryland.
Q. For the entire portion of the tract you own?
A. Yes sir.
Q. Have you always paid your taxes in the State of Maryland?
A. Yes sir, for that piece of land.
Q. Has the State of West Virginia ever attempted to enforce the payment of taxes from you?
A. No sir.
Q. Your title is on record in Maryland?
A. Yes sir.

Well, Senator, you can take the witness.

Mr. PRICE—Cross-examination:

Q. Mr. Faulkner, from whom did you buy this piece of land?
A. I bought the land from—well, I contracted with Dick Farley, but Trueman gave me the deed; Trueman bought it at public sale.
Q. What Sheriff sale was that?
1925 A. Ralph —— owned it. Before it was sold. At Sheriff's sale Trueman Farley bought it.
Q. And he deeded it to you?
A. Yes sir.
Q. That was in 1864?
A. In 1864, the fall of 1864.
Q. When did you move onto it?
A. Well, sir, I moved onto in the spring of 1867.
Q. Was there a house there when you bought it?
A. No sir.
Q. You built the house then that you live in?
A. Yes sir. There is the two old tobacco houses stood there but one house I believe burned down and they built it and the snow mashed it down I believe.
Q. Where did you live at the time you bought this property?
A. About two miles down the Creek, northeast.
Q. How far was it from the old Deakins line?
A. The old Deakins line?
Q. The old Maryland line?
A. The old Maryland line?
Q. Yes.
A. Well, sir, about, I guess it is about 800 yards.
Q. Where did you live in 1864 at the time you bought this property?
A. Yes sir, there is where my home is.
Q. You raised a family and children?
A. Yes sir.
Q. Where have they gone to school?
A. Well, sir, they went to school in Maryland.

Q. All the time?

1926 A. Yes sir, there was no school houses in Virginia close.

Q. Do you own any other land there except this 114½ acres of Elder Spring?

A. I don't now.

Q. Do you own any land of any kind anywhere?

A. Yes sir, I own 86 acres in Preston County, West Virginia.

Q. Where is that?

A. It lays about five miles northwest of me, part of the old De Berry land.

Q. Don't you own any adjacent to the Elder Spring?

A. Yes, there is a strip there now; it belongs to what is called the Deal tract.

Q. You own some of it?

A. Yes sir.

Q. How much?

A. I suppose twenty or thirty acres; it has never been run since I bought that strip.

Q. Where does that lie with reference to the Elder Spring?

A. East of it.

Q. East of it?

A. Yes sir.

Q. Between it and the old Maryland line?

A. Old Maryland line, yes sir, the line Mr. Monroe run runs through that.

Q. Did you get a Virginia title for that?

A. No sir, he made me a Maryland title for that.

Q. Don't you know whether it is a Virginia title or not?

A. Indeed I cannot tell you that.

Q. Did you not have the title examined?

1927 A. No sir, he made me the deed in Maryland for it.

Q. You just bought a pig in a poke, did you, without knowing whether your title was good or not?

A. Without knowing whether my title was good or not.

Q. Did you have that deed recorded on Oakland?

A. Yes sir.

Q. You did not have it recorded in Preston County, West Virginia?

A. No sir, he had a Maryland title for it.

Q. When did you buy that?

A. I bought that, oh, it has been about seven or eight years, I guess, some place as near as I can tell you.

Q. Now, hadn't that land been assessed prior to that time in West Virginia?

A. Not as I know of.

Q. Wasn't that your information?

A. No.

Q. Did you not know that land there had been held under a Virginia title?

A. No. I paid taxes in Maryland. The balance of the tract of land he lives on.

Q. Who?

A. John H. Friend. He just sold me a strip off, there was a little strip adjoining me and there was a road turned up to my line, west of this here county road.

Q. What direction does that County road run?

A. It runs north and south along there until it comes out on the Kingwood road, and then it runs west, a little southwest.

Q. What kind of a road is that, what County there worked it?

A. Maryland; Maryland has been working it, laid it out.

1928 Q. When?

A. It has been a good many years, sometime after the war, a few years, Maryland located it and made it and worked on it.

Q. Does that extend over to the Elder Spring tract?

A. No sir—yes sir, it does, it runs towards the Elder Spring tract for it comes out by Marsh Friend.

Q. Marsh Friend does not live in Maryland, does he?

A. I could not say in Maryland; he had a Virginia title.

Q. He lives further on than you do?

A. Not much, I guess.

Q. Isn't it further on?

A. Well, I couldn't say rightly which does live the farthest east.

Q. That is your best judgment about it? You live on the Elder Spring tract?

A. Yes sir.

Q. Does he not live east of the Elder Spring tract?

A. Yes sir.

Q. Then he lives east of you?

A. East of that tract.

Q. And you think he has a West Virginia title?

A. He paid taxes for his land, I know, in Virginia. At least he always claimed so. That is for the Deal tract, but for the Elder Spring tract he paid in Maryland.

Q. You think the Deal tract is a Maryland title?

A. I won't say.

Q. Isn't it a Virginia title?

A. I won't say.

Q. How was it transferred?

1929 A. I don't know, he had it done.

Objection to preceding question and answer by Plaintiff.

Q. You mean simply that the deed was transferred?

A. Yes sir.

Q. It was recorded over in Maryland?

A. It was transferred; I won't say, I do not know, but ever since I lived there and moved there he has been paying taxes in Maryland; I think I moved there, maybe in the spring of 1864 or 1865.

Q. You say that your Grandaddy Sisler showed you this black gum and white oak snag in 1858 or 1859?

A. No sir.

Q. John Kelley did?

A. Along there some place about that time, old John Kelley. Sisler showed it to me about 1867 or 1868.

Q. You did not own this land at the time John Kelley showed it to you?

A. No sir, I did not; Ralph Thayer owned it at that time.

Q. How much of your land extends west of the Michler line?

A. Well, now, I couldn't just tell you, several acres of it. If this is the line here in the same place where the beginning is, it comes around here and here is where this line comes there. There is a line comes through here. And there is a strip comes out through here; it is a little wider out here than up here. Here some place is a line comes over.

Q. Now, leave the map alone, and tell us how much of your land lies west of the Michler line?

A. 30 to 35 acres, from 25 to 35 acres; most of — is in woods.

Q. Did you see the Michler line?

A. Did I see the Michler line?

1930 Q. Yes?

A. I seen them when they was running it, yes sir.

Q. Along there?

A. I was not along with them when they run over this property. At Fike's they went a little towards Cranesville.

Q. How far from this?

A. Oh, about six or seven mile, I guess, maybe not that on the line there, maybe five mile on the line from this tract of land.

Q. Where did John N. Friend get his land?

A. I think he bought it of a young Henry Thomas, as near as I can recollect; I won't say positively, but I rather think he did.

Q. Do you know where Henry got it?

A. Now, I won't say, but whether he got it from his father or not, it appears to me that his father, old Henry owned it at one time.

That is all I believe.

For PLAINTIFF:

Q. Mr. Faulkner, has the State of West Virginia, ever presented you with a tax bill for that Deal strip of land?

A. No sir.

Q. You have always paid taxes on that, as well as your other property, in Maryland?

A. Yes sir.

That is all.

Further deponent saith not.

Signature waived.

DARK PAGE BLEED

1931 EDMOND JAMISON, called on the part of the plaintiff, being first duly sworn, says:

Direct examination:

Q. State your age, residence and occupation?
A. Age 66, I live at Crelon, Garrett County, Maryland. I am a farmer.
Q. What official positions have you held in Garrett County, if any?
A. I have been Sheriff.
Q. More than once?
A. Three times, sir.
Q. Were you present at any time upon the survey in this case when Mr. Brown, the surveyor, was making the locations?
A. Yes sir.
Q. When were you on the survey, Mr. Jamison?
A. I think it was in March, 1887, I think—'97, I mean. It was along the second of August we went up.
Q. Did you continue on the survey?
A. Yes sir.
Q. As I understand you, you were on the survey from the time the locations were started until they were finished?
A. No over here at Camp Garner, sometime in November.
Q. November 1897?
A. Yes sir.
Q. Did you point out any objects on the ground to Mr. Brown?
A. Yes sir, I pointed out a corner of Thomas & Ann.
Q. What corner of Thomas & Ann did you point out to Mr. Brown?
A. The beginning corner.

1932 Q. Will you please look at the plat now shown you and state where the corner is that you pointed out to Mr. Brown as the beginning of Thomas & Ann, and how it is designated on the plat?
A. There is the beginning corner, sir.
Q. How is it designated on the plat?
A. Stone marked R. O., and three or four bounded white oak trees.
Q. How is it shown upon the plat, what figure or letter?
A. Black D.
Q. Who pointed out the beginning of Thomas & Ann to you?
A. Mr. R. T. Brannon and McRobie.
Q. Is Daniel McRobie living or dead?
A. He is dead, sir.
Q. You have stated that this corner is marked upon the ground by a planted stone marked R. O.?
A. Yes sir.
Q. What do the characters R. O. indicate?

Objected to.

THRU

A. My understanding is they stand for Robert Oliver.

Objected to.

Q. Did Robert Oliver ever own the Thomas & Ann?
A. Not that I know of, I don't think so.
Q. Then you do not know why the stone was marked R. O.?
A. No, I understand it was marked R. O. for Robert Oliver.

Objected to.

Q. Do you know what Daniel McRoby's source of knowledge was concerning this beginning?

A. No, I do not, only they told me, the corner was pointed out to him, I am not positive, but I think it was Thomas F. White, the old surveyor.

Objected to.

1933 Q. Is Thomas F. White living or dead?
A. He is dead, sir.

Q. Do you know where the beginning of the tract of land called Promised Land is located?
A. Yes sir.
Q. Please look at the plat and state how it is shown upon the plat?

Objected to.

A. It is shown by letter black letter B.

Objected to.

Q. How is the beginning of Promised Land shown on the ground?

A. Well, the trees, the beginning of the corner, stand, I think, some forty rod up in the tract and runs due north forty rod, due north and then around the line?

Q. How many trees and what kind of trees are at the beginning of Promised Land?
A. Whiteoak.
Q. Do you remember the number of trees there?
A. There is two.
Q. Two?
A. Two trees.
Q. Are they marked?

A. One of them is marked; I do not remember whether the other is or not.

Q. Are the marks old marks?
A. Very ancient marks.

Q. You have had considerable experience, Mr. Jamison, have you not, in locations of tracts of land?
A. Yes sir.
1934 Q. Have you been on a great many surveys?
A. Yes sir.

Q. And you say from the knowledge that you thus acquired that the trees at the beginning of the Promised Land are anciently marked, at least one of them?

A. Yes sir, I consider them so.
Q. Who pointed out the beginning of Promised Land?
A. I think it was Mr. Harned.
Q. What connection has Mr. Harned with the tract of land called Promised Land?
A. I think he owns a portion of it.

Defendant objects to testimony of witness, as to the beginning of the corner of Promised Land, and as to its being pointed out by Mr. Harned, as incompetent.

That is all.
Mr. PRICE: I don't want to ask Mr. Jamison anything.

Further deponent saith not.

Signature waived.

1935 *Certificate.*

STATE OF MARYLAND,
Garrett County, To-wit:

I, G. A. Fraley, a Notary Public of the State of Maryland, in and for Garrett County, aforesaid, do hereby certify that the above named witnesses, Jacob P. Gauer, Henry Sisler, W. McCulloh Brown, Parker Ashby, Jesse J. Ashby, Jr., John Harned, Thomas Browning, George L. Mosser, Richard T. Browning and Edmund Jamison were first duly sworn, and their depositions taken before me on the 16th, 17th, 18th, 19th, 21st and 22nd days of July, 1902, at the law office of Edward H. Sincell, in the town of Oakland and elsewhere in Garrett County, Maryland in accordance with the stipulation of Counsel hereto annexed.

In testimony whereof, I have hereunto signed my name and affixed my Notarial seal, this 23rd day of July, A. D. 1902.

[SEAL.] G. A. FRALEY,
Notary Public.

EED THRU

1936 In the Supreme Court of the United States.

No. —. Equity.

STATE OF MARYLAND
vs.
STATE OF WEST VIRGINIA.

Deposition of witnesses taken in Oakland, Garrett County, Maryland, before Harland L. Jones, a Notary Public of the State of Maryland in and for said Garrett County, on Saturday, the *21st* day of *July, A. D. 1906*, to be read on behalf of the Plaintiff in a Chancery suit now pending in the Supreme Court of the United States, wherein the State of Maryland is Plaintiff, and the State of West Virginia is defendant.

Testimony Taken on Behalf of the State of Maryland.

Counsel for Maryland, Edward H. Sincell.
Counsel for West Virginia, George E. Price.

JOHN HARNED, a witness being produced, and by me duly sworn on behalf of the State of Maryland, deposes and says:

Q. Please look at the plat now shown you, being the map in this case, prepared for the State of Maryland, at the tract of land located thereon called "The Promised Land," and state whether or not you pointed out the beginning of said tract of land to Mr. W. McCullough Brown at the time he made the survey thereof?

A. I did not.

Q. How is the beginning of that tract marked on the ground?

A. The original is now gone. It was a red oak tree standing between two white oaks. The two white oaks are now standing, but the red oak is gone.

Q. How is the beginning located on that plat?

A. By the black letter B.

Q. The witness was here cross examined by Mr. Price Counsel for West Va.

Q. Mr. Harned you own that "Promised Land" tract, do you not?

A. I own part of it. Until recently I owned where the
1937 beginning stood.

Q. Did you ever make a survey of that tract yourself?

A. I made a survey of it myself, and am familiar with the lines of it.

Q. Which is the older tract, "Promised Land" or "Thomas and Ann"?

A. I think Promised Land but am not certain.

Q. I notice on the plat there appears to be a space between Promised Land and Thomas and Ann. Is that correct?

A. Yes sir. That is a resurvey. The original Promised Land and Thomas and Ann called for one another at that end did they not?

A. No sir. There was six rods between them and the resurvey took that in together with some other land.

Further this deponent saith not.

Signature of witness waived by Counsel.

RICHARD T. BROWNING, a witness being produced, and by me duly sworn on behalf of the State of Maryland, deposes and says:

Q. Please state whether or not you were on the survey of the lines in this case at the head waters of the Potomac River in the year 1897?

A. I was.

Q. Who were present with Mr. Monroe the Surveyor on the part of West Virginia in this case, at the time he made the measurement of the streams running Fairfax Spring and Potomac Spring?

A. I was present.

Q. What method of measurement did Mr. Monroe use in *in* ascertaining the length of the respective streams?

A. I do not think he measured but the one stream running from Fairfax Spring. My recollection is that he used a hundred foot tape line.

Q. Did Mr. Monroe use a Compass or Transit in locating the stream?

1938 A. No sir, he just measured it.

Cross examined by Mr. PRICE, Counsel for West Virginia:

Q. Who carried the tape measure.

—. Little Jimmy Burwell, and I think Reed Wolfe, but am not certain.

Q. The tape used was a steel tape was it not, such as is used in surveying and engineering?

A. Yes sir.

Q. Are you not in error in thinking he only measured one stream?

A. I am not positive on that point. He may have measured both streams.

Re-examined by Mr. SINCELL, Counsel for Maryland:

Q. Please look at the book now shown you and state what it is?

A. It is my note book of the survey. Since I look at my notes there is no question but that I assisted Mr. Monroe in measuring both streams.

Further this deponent saith not.

Signature of witness waived.

No other witness being present to be examined, I closed the said depositions, and herewith return all of said testimony, taken by me, under my hand and Notarial Seal, this 23rd day of July, 1906.

[SEAL.] HARLAND L. JONES,
Notary Public.

I hereby certify that the cost of taking said depositions is as follows:

Harland L. Jones, Notary Public.....$ .25
James C. Peddicord, Stenographer..... 2.25

$2.50

Endorsed: No. —. Equity in the Supreme Court of the United States. State of Maryland *vs.* State of West Virginia. Depositions taken by Harland L. Jones, N. P., on behalf of Maryland.

Office Supreme Court U. S. Filed Oct. 15, 1907. James H. McKenney, Clerk.

1939 Endorsed on cover: Supreme Court U. S. No. 1 Original, Oct. Term, 1907. Maryland *v.* West Virginia, Filed October 15, 1907. In the Supreme Court of the United States. The State of Maryland, Plaintiff, *vs.* The State of West Virginia, Defendant. In Equity. *Depositions on behalf of the Plaintiff, taken at Oakland, Maryland, July 25th and 26th, 1907.* Appearances: For the plaintiff: Mr. E. H. Sincell. For the Defendant: Hon. George E. Price. Office Supreme Court U. S. Filed Oct. 15, 1907, James H. McKenney, Clerk.

THE STATE OF MARYLAND
vs.
THE STATE OF WEST VIRGINIA.

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1940 In the Supreme Court of the United States. In Equity.

STATE OF MARYLAND
vs.
STATE OF WEST VIRGINIA.

It is agreed that the depositions to be taken by The State of Maryland at Oakland, Garrett County, Maryland, commencing on the 25th day of July, 1907, may be taken before a Notary Public without notice, the Defendant appearing by Counsel and waiving notice, and may be certified in the usual manner, under the seal of the Notary Public; that they may be taken down by a stenographer, in shorthand writing, and afterwards transcribed by him from his steno-

graphic notes, each party waiving the signatures of the witnesses to their respective depositions.

EDWARD H. SINCELL,
Ass't Counsel for the State of Maryland.
GEO. E. PRICE,
Counsel for the State of West Virginia.

1941 In the Supreme Court of the United States. In Equity.

THE STATE OF MARYLAND, Plaintiff,
vs.
THE STATE OF WEST VIRGINIA, Defendant.

Depositions of witnesses taken in Garrett county, Maryland, before me, B. Frank Selby, a Notary Public in and for said Garrett county, at the law office of E. H. Sincell in the town of Oakland, on the dates hereinafter set forth, beginning on the 25th day of July, 1907, pursuant to the stipulation of counsel hereto attached, to be read as evidence in behalf of the plaintiff in a chancery suit now pending in the Supreme Court of the United States, wherein the State of Maryland is plaintiff, and the State of West Virginia is Defendant.

Present: E. H. Sincell, Esq., counsel for the State of Maryland, and George E. Price, Esq., counsel for the State of West Virginia.

D. WEBSTER WILSON, a witness produced on behalf of the State of Maryland, having been first duly sworn, deposes and says as follows:

Deposition of D. Webster Wilson.

Examination by Mr. SINCELL:

Q. 1. State your name?
A. D. Webster Wilson.
Q. 2. Your age?
A. Forty-five years.
Q. 3. Your residence?
A. In Garrett county, Maryland.
1942 Q. 4. And your occupation?
A. I am a farmer and lumberman.
Q. 5. Do you own any lands in Garrett county, along and in the neighborhood of the line dividing the State of Maryland and the State of West Virginia?
A. Yes sir.
Q. 6. What tracts of land do you own in that neighborhood?
A. A tract called "West Point" and "Troas Re-Surveyed."
Q. 7. Do you know Mr. W. McCulloh Brown?
A. Yes sir.

Q. 8. The surveyor in this case on the part of the State of Maryland?

A. Yes sir.

Q. 9. Were you with Mr. Brown at any time while he was engaged in making surveys in this case?

A. Yes, sir.

Q. 10. When were you with him and where?

A. I do not remember the exact date.

Q. 11. What month was it?

A. It was in August, I think.

Q. 12. Of what year?

A. Of last year—1906.

Q. 13. What did you point out to Mr. Brown, if anything, at that time?

A. I pointed out the end of the thirteenth line of "West Point."

Q. 14. What is there upon the ground, if anything, to designate the end of the thirteenth line of "West Point"?

A. Well, there is a log there, and a chestnut tree.

Q. 15. Will you please look at the map prepared in this case by Mr. Brown, and state where the point that you showed Mr.
1943 Brown is designated upon this map?

A. I look at said map and state that the point is designated on the map by the black letters "W. B."

Q. 16. Who, if any one showed you that point?

A. Mr. George L. Mosser showed me that point.

Q. 17. What did Mr. Mosser show you that point as?

A. As a corner of "West Point".

Q. 18. Is Mr. Mosser living or dead?

A. He is dead.

Q. 19. How long has he been dead, if you know?

A. About two years last March, I guess.

Q. 20. Are you acquainted with the lines of the tracts of "West Point" and "Troas Re-Surveyed".

A. Yes, sir.

Q. 21. You are a surveyor yourself, are you not, Mr. Wilson?

A. Oh, I survey some sometimes.

Q. 22. Do you know where the beginning of "West Point" and "Troas Re-Surveyed" is?

A. Yes, sir.

Q. 23. Please look at the map and state how the beginning of these tracts is designated on the map?

A. I look at said map and state that the beginning of these tracts is shown at black "T".

Q. 24. Were you with Mr. Brown, the surveyor, at any other point than that designated "W. B." on the plat at the time he was engaged in making the survey?

A. Yes, sir; I was with Mr. Brown when he ran these two last lines marked there.

Q. 25. State how they are marked.

A. Well, here is where we commenced at black "W. B."
1944 and ran this line (indicating).

Q. 26. What line is that?
A. That would be the fourteenth line.
Q. 27. Of what?
A. Of "West Point"; the fourteenth and fifteenth lines of "West Point".
Q. 28. Did you accompany Mr. Brown any farther at that time?
A. Yes, sir.
Q. 29. Where did you go with him?
A. We ran from the end of the fifteenth line here, (indicating) across the mountain to this point, black "W. T."
Q. 30. Do you know in what line, if any, the point black "W. T." is?
A. Well, it is near the Michler line—what is known as the Michler line,—as I understand it.
Q. 31. That is on the West side of the Back Bone Mountain?
A. Yes, sir; that is on the West side.
Q. 32. Do you know where the monument is on the summit of the Back Bone Mountain?
A. Yes, sir.
Q. 33. Near black "W. T."?
A. The monument is designated by black "X. B." and the words "Back Bone Station."

And upon cross-examination by Mr. Price, the witness testified as follows:

Cross-examination:

Q. 1. Did you say that you own lands joining the two tracts called "West Point" and "Troas Re-Surveyed"?
A. I own the two tracts.
Q. 2. Oh, you own those two tracts, do you?
1945 A. Yes, sir.
Q. 3. The whole of them?
A. Yes, sir.
Q. 4. How long have you owned them?
A. Why, about two years. I have owned a portion of "West Point" here for about thirteen years—160 acres of it; the balance of if,—well, I haven't owned it quite two years yet; I do not remember now just the date of the deeds.
Q. 5. What portion of "West Point" have you owned for about thirteen years?
A. This portion in here (indicating).
Q. 6. What is it, the Southern, Northern, Eastern or Western portion?
A. Southern, or Southeastern.
Q. 7. Did you own during that time the part of it which includes the beginning corner?
A. No, sir.
Q. 8. When did you first know of that tract being surveyed?
A. I do not remember now; it was along about 1890, though I think.

Q. 9. Was the whole tract surveyed at that time—"West Point"?

A. I do not think it was all surveyed at that time.

Q. 10. Have you ever seen the beginning corner located by actual survey on the ground?

A. Well, I would not know how to go about that. It was located, or found, rather, by reversing some lines from the cucumber corner that was found here (indicating). Here is where the cucumber corner was (indicating) and by reversing these three first lines the beginning was found bearing the marks.

Q. 11. What point is the beginning of that tract.—"West Point"?

A. This point here (indicating)—black "T."

1946 Q. 12. Well, what is the point "W. B."

A. That is at the end of the thirteenth line where it calls for a chestnut tree.

Q. 13. Well, now, look at the original patent for the "West Point" tract, the description of which is as follows: "Beginning at a bounded white oak, cucumber and maple standing North 62° and a half degree East 363 perches from the three mile tree on a line drawn North from the head of the North branch of the Potomac River and on the East side of the ridge called "Back Bone," which divides the eastern and Western waters, and running thence North 50° East 22 perches." Now, does that point "T" stand at the end of a line drawn in a manner indicated in the patent, from the three mile stone on a line drawn North from the head of the North branch of the Potomac River?

WITNESS: Which line is that?

Mr. PRICE: Does this point "T" which you have pointed out as the beginning corner of "West Point," and North 62° and a half degree East 363 perches from the three mile tree on a line drawn North from the head of the North Branch of the Potomac—does that point "T" stand at the end of that line drawn in that manner?

A. Well, I could not answer that because I do not know where the three mile tree was.

Q. 14. You never tested that beginning corner by the patent, did you?

A. No, I never knew where the tree was.

Q. 15. You never saw it surveyed in that way?

A. No, sir.

Q. 16. All you know about it is that Mr. George L. Mosser told you that that point was the beginning, or did he tell you that that was the beginning of "West Point"?

1947 A. No, he pointed out this chestnut as a corner.

Q. 17. He pointed out the point "W. B." as the end of the thirteenth line?

A. Yes, sir.

Q. 18. Now, who pointed out that "T" to you as the beginning corner of "West Point"?

A. Well, my father showed me that in the first place as the beginning corner.

Q. 19. Did your father own the tract?

A. I do not remember whether he had bought it yet at that time or not; he did then or shortly afterwards.

Q. 20. Own the "West Point" tract?

A. Yes, sir.

Q. 21. When did he point that out to you?

A. I do not remember the date; it was along about 1890, as well as I remember.

Q. 22. When did he own the "West Point" tract?

A. I think it was about that time that he bought the tract; I don't remember,—that is, the dates now.

Q. 23. Of course I don't want you to be strictly accurate but as near as you can tell.

A. Along about that time—1890 or '91.

Q. 24. Whom did he purchase it from?

A. Well, he purchased it from a man by the name of Cresap, I believe.

Q. 25. Did your father buy the whole of the "West Point" tract from Cresap?

A. Yes, sir.

Q. 26. And then you bought a portion of it from your father?

A. Yes, sir.

1948 Q. 27. And that is all you know about that point "T" being the beginning corner?

A. Yes, sir.

Q. 28. Is it marked in any way?

A. Yes, sir; it shows the marks—the white oak does; that is still standing there.

Q. 29. There is a white oak there, is there?

A. Yes, sir.

Q. 30. Is there a cucumber there?

A. No, sir.

Q. 31. Or a maple?

A. No, sir.

Q. 32. Is there any evidence of any such trees having been there?

A. No, I do not know that there is any direct evidence; there have been trees standing near there but you could not tell where they were.

Q. 33. Do you know, Mr. Wilson, where the three mile stone is on the old Maryland line?

A. No, sir.

Q. 34. Have you ever seen that line run from the Fairfax stone North?

A. No, sir.

Q. 35. Is there more than one line known as the Maryland line—the Maryland and West Virginia boundary line—along West of your land there?

A. No, I do not think there is more than the one that is acknowledged as the line.

Q. 36. Well, isn't there more than one claimed as the line?

A. What they call the old Deakins line I do not think is
1949 located very plainly; I do not know where it was.

Q. 37. When did you become the owner of the tract known as "Troas Re-Surveyed"?

A. About two years ago.

Q. 38. Whom did you purchase it from?

A. From Eliza Wilson.

Q. 39. The whole tract?

A. Yes, sir.

Q. 40. And where did she get —, do you know?

A. Well, she got it from the Wilson Lumber Company.

Q. 41. Well, that is the same tract that was patented to Richard S. McCulloh and Daniel E. Offut, January 22, 1896, isn't it?

A. Yes, sir.

Q. 42. And it is under that patent that you claim title?

A. Yes, sir.

And upon redirect examination by Mr. Sincell, the witness testified as follows:

Redirect examination:

Q. 1. What was your father's name?

A. George Washington Wilson.

Q. 2. Is he living or dead?

A. He is dead.

Q. 3. When did he die?

A. In 1894.

Q. 4. What line in the vicinity of the tracts "West Point" and "Troas Re-Surveyed" is recognized as the boundary between the States of Maryland and West Virginia? I mean what is it called?

A. The boundary line between Maryland and West Virginia? The Michler line.

1950 And upon re-cross examination by Mr. Price, the witness testified as follows:

Recross examination:

Q. 1. Mr. Wilson, this patent for the tract called "West Point" speaks of a line drawn North from the head Spring of the North Branch of the Potomac River. This patent is dated the 24th day of June, 1793. That line referred to there is not what you call the Michler line is it?

Exception by counsel for the State of Maryland.

A. Yes, sir; I think it is.

Q. 2. Is it the same line that is referred to in the patent for "Troas Re-Surveyed"?

Exception by counsel for the State of Maryland.

Q. (continued). Is this line spoken of as drawn from the head of the North Branch of the Potomac in 1793, the same line that is

spoken of in the patent for "Troas Re-Surveyed" as the Michler line?

Exception by counsel for the State of Maryland.

A. Well, I could not say positively.
Q. 3. Well, don't you know that there is a different line in there?
A. I have heard a different line spoken of.
Q. 4. Known as the Deakins line?
A. Yes, sir.
Q. 5. Now, where have you understood that was located with reference to the Michler line—East or West of it?

Exception by counsel for the State of Maryland because the State of West Virginia has not located any line known as the Deakins line, in this case.

1951 A. Of course I never knew where the location of the Deakins line along there was.
Q. 6. But isn't there a reputation and tradition in that country that there is an old line which runs some twelve rods or more East of the Michler line along there?
A. Yes, sir.
Q. 7. Have you ever seen that line run along there—that old line?
A. No, sir.
Q. 8. Do you know when the Michler line was run?
A. I do not know the exact date of it.
Q. 9. It is the line that was run in 1859, or about that time?
A. In 1859; yes, sir.

SAMUEL FALKNER, a witness produced on behalf of the State of Maryland, having been first duly sworn, deposes and says as follows:

Deposition of Samuel Falkner.

Examination by Mr. SINCELL:

Q. 1. State your name?
A. Samuel Falkner.
Q. 2. Your age?
A. I am sixty-three past.
Q. 3. Your residence?
A. Maryland; Garrett county.
Q. 4. Your occupation?
A. I am a farmer, or was.
Q. 5. Are you acquainted with the lines, or any of them, of a tract of land called "Elder Spring"?
1952 A. Yes, sir.
Q. 6. Do you know the beginning of the tract called "Elder Spring"?
A. Yes, sir.
Q. 7. How long have you known it?
A. Since 1868.

Q. 8. What is there at the beginning of this tract to designate it?

A. A gum tree; and there was at that time a white oak snag. It was spoken of as a white oak tree, I believe, but there is but little of the stump there yet; the snag has fallen down.

Q. 9. Who pointed out to you, if any one, the beginning of "Elder Spring"?

A. Who? Sammie Sisler—old Grandaddy Sisler.

Q. 10. Is he living or dead?

A. He is dead; he died just about a year after that; he was a very old man.

Q. 11. Do you own any part of the tract called "Elder Spring"?

A. Well, I cannot say that I do at present—at this day. My son owns it; I have deeded it to him.

Q. 12. You did own it?

A. Yes, sir; I did own it.

Q. 13. How many acres of the tract called "Elder Spring" did you own?

A. One hundred acres more or less—114 acres and a half, I believe they said was in the end I owned.

Q. 14. Who owned it before you bought it?

A. I bought it of Truman Fairall.

Q. 15. Are you acquainted with any of the lines of the tract called "White Rock"?

1953 A. Yes, sir; I am.

Q. 16. Were you ever on a survey when the lines, or any of them, of that tract were run out upon the ground?

A. Yes, sir; I have been there with them.

Q. 17. Do you know Mr. W. McCulloh Brown, the surveyor, in this case on behalf of the State of Maryland?

A. Yes, sir.

Q. 18. Were you present on the ground and did you point out to Mr. Brown any object called for in the lines of the tract of land called "White Rock"?

A. Yes, sir.

Q. 19. When were you on the ground with Mr. Brown in connection with that tract?

A. Well, now, I can't give you just the exact date; it was last Fall—about the latter part of August or along the first of September or sometime along there; I could not just say.

Q. 20. In the year 1906?

A. Yes, sir; in the year 1906?

Q. 21. What if anything did you point out to Mr. Brown at that time?

A. I pointed out that gum tree.

Q. 22. Do you know where that gum tree stands with reference to the lines of the tract called "White Rock"?

A. Yes, sir.

Q. 23. Where does it stand?

WITNESS: The gum tree?

Mr. SINCELL: Yes, sir.

A. Well, the "White Rock" runs up around and corners with that tree from a double oak.

1954 Q. 24. Do you know at the end of which line of "White Rock" that tree stands?

A. About the fourth, I believe.

Q. 25. At the end of the fourth line of "White Rock"?

A. Yes, sir; I believe so.

Q. 26. Did you point that out to Mr. Brown?

A. Yes, sir; I pointed that out.

Q. 27 Will you please look at that map and state where and how the beginning or the gum tree is designated on the map?

A. It is shown on the map at the black letter "F."

And upon cross-examination by Mr. PRICE, the witness testified as follows:

Cross-examination:

Q. 1. Mr. Falkner, why do you say that that gum is at the point designated by the letter "F" on the map?

A. Why, it is the beginning of the "Elder Spring" tract of land.

Q. 2. Well, do you know that the "Elder Spring" is properly laid down on the that map?

A. Well, now, I cannot tell just positively, but it looks to me that it is; that is laid down on that the way the lines run here.

Q. 3. It looks to you as though it is?

A. Yes, sir; it looks so to me. Now, here is where we ran from the that gum tree (indicating) 98 rods, and here comes Bitner. Well, then, from here (indicating) it runs here (indicating) and corners, I believe, on a stone. I will not say positively but I rather think it does; then it runs from there out to here (indicating) and there is a white oak stump at the end of Bitner's line between here and Marshall Friend's tract of land.

Q. 4. You do not own any part of the "White Rock" survey, do you?

1955 A. No, sir.

Q. 5. And never did?

A. Yes, sir; I did I bought a piece off of the "White Rock" survey that corners at the gum; we always called it the Notley Browning tract of land of about seven acres, or something like that, as near as I can tell you.

Q. 6. Whom did you buy the seven acres from?

A. From John H. Friend.

Q. 7. When?

A. It has been about twelve or fourteen years ago, as near as I can tell you, or something like that.

Q. 8. Did you claim it as a part of the "White Rock" then?

A. We always claimed it as the Browning tract of land.

Q. 9. Well, didn't Browning have another title to that, besides the "White Rock" patent? Didn't he have a Virginia title to that?

A. I guess may be he had; as near as I can tell you he had bought it of Crane's heirs.

Q. 10. And after they ran the new Michler line he took the "White Rock" patent out as a protection, didn't he?

A. Well, now, it was after the Michler line was run I suppose that

he took that patent; he did not own that land I do not suppose at that time.

Q. 11. He owned it under the Crane title, didn't he, before that—before the line was run?

A. No, I do not think he did; he didn't buy it, I do not think, until after the line was run. Old Johnny Crane died the Fall before this Michler line was run. He owned that tract of land at that time and then Browning, I suppose, bought it. I could not say just positively the date; Browning bought it just sometime after his death.

1956 Q. 12. Didn't Browning buy that Virginia title before he got his patent of the "White Rock"?

A. Yes, sir; I think he did.

W. McCulloh Brown, a witness produced on behalf of the State of Maryland, having been first duly sworn, deposes and says as follows:

Deposition of W. McCulloh Brown.

Examination by Mr. Sincell:

Q. 1. What official relation, if any, have you with the surveys in this case?

A. I have been the surveyor on the part of Maryland.

Q. 2. You are the same W. McCulloh Brown who testified in this case upon a former occasion, are you not?

A. I am.

Q. 3. Please state if in the course of the surveys in this case you located by actual survey on the ground the subdivisions of the tract of land called "Elder Spring" as made by William W. Hoye at the time he sold and conveyed said tract?

A. I did.

Q. 4. Will you please look at the paper now shown you, being a certified copy of a deed from W. W. Hoye and wife to Daniel Raymond, dated the 14th day of January, 1833, and state how the land described in said deed is designated upon your map?

A. I look at said paper and see that the tract here described is designated upon the plat by the black letters "E. A." within the black lines, within the tract of "Elder Spring." The sub-division is designated by "E.A."

Q. 5. How and where is the beginning of said sub-division
1957 shown upon your map?

A. It begins at black "F."

Q. 6. And is it shown at black "F" upon the map?

A. It is shown at black "F". Black "F" also shows the beginning of the original of "Elder Spring".

Q. 7. What is there upon the ground, if anything, to mark the beginning of the original tract called "Elder Spring"?

A. There is a gum tree and a white oak stump.

Q. 8. Will you please state what the black letters "W.X." on your map indicates?

A. The black letters "W.X." indicate a point at the end of 98 perches on the first line of the original tract of "Elder Spring."

Q. 9. Is that a point called for in any of the sub-divisions of the tract called "Elder Spring"?

A. It is.

Q. 10. What point is it?

A. It is the end of the first line of the sub-division conveyed to Daniel Raymond.

Q. 11. By whom?

A. By W. W. Hoye.

Q. 12. Will you please look at the paper now shown you being a certified copy of a deed from William W. Hoye and wife to John Kelley, dated the 14th day of January, 1833, and state how the land described in said deed is designated upon your map?

A. I look at said deed and the land here described is designated upon the plat by the black letters "E.B." within the lines of "Elder Spring."

Q. 13. How and where is the beginning of this sub-division shown upon your map?

1958 A. It is shown at the black letters "W.U." at the end of the second line of the original survey.

Q. 14. I believe you have already explained what the black letters "W. X." indicate?

A. The black letters "W. X." in connection with this sub-division indicate the end of the third line of the sub-division, according to the point called for at the end of that line.

Q. 15. Will you now please look at the paper shown you, being a certified copy of a deed from W. W. Hoye to James Ervin, dated the 9th day of June, 1832, and state how the land described in said deed is designated upon your map?

A. I look at this deed from W. W. Hoye to James Ervin, and the land here described is designated upon the plat by the black letters "E.C." within the lines of the "Elder Spring" tract.

Q. 16. How and where upon your map is the beginning of this subdivision shown?

A. It is shown at the black letters "W.U." which stand at the end of the second line of the original.

Q. 17. Will you please state what the black letters "W.V." on your map indicate?

A. The black letters "W.V." mark the end of 57 perches upon the fourth line of the original survey of "Elder Spring" and the end of the second line of this sub-division "E.C."

Q. 18. Will you please now look at the paper shown you, being a certified copy of a deed from William W. Hoye to David Kelley, dated the 19th day of December, 1831, and state how the land described in said deed is designated upon your map?

A. I look at the deed from W. W. Hoye to David Kelley. This portion of "Elder Spring" is designated upon the plat by two

1959 sets of letters—black "E.D." and black "E.E.—within the lines of "Elder Spring."

Q. 19. How and where is the beginning of this sub-division of "Elder Spring" shown or described upon your map?

A. The beginning of this sub-division is shown upon the map by the black letters "W V." which stand at the end of 57 perches upon the fourth line of the original survey of "Elder Spring."

Q. 20. Will you please state what the black letters "W.W." and "W.Y." indicate upon the map?

A. The black letters "W.Y.", near the fourteenth line of "Elder Spring" indicate a point at the end of 44 perches upon said fourteenth line of the original. The black letters "W.W." near the eighth line of the tract called "Elder Spring" indicate a point at the end of 83 perches upon said eighth line of the original survey of "Elder Spring."

Q. 21. Since your deposition was taken in this case have you made any other and further locations on behalf of the State of Maryland?

A. I have.

Q. 22. Will you now please turn to the first of said locations as made by you and explain what you did in connection therewith?

A. The first work done in the additional locations was begun at the black letters "W.B." within the lines of a tract of land designated as "West Point," the letters "W.V." marking the end of the thirteenth line of the original tract of "West Point." At the point "W.B." a chestnut tree was pointed out to me by D. W. Wilson, a witness produced upon the ground, as the original tree, or the stump of the original tree, marking the end of the thirteenth line of "West Point." In order to locate the end of the fifteenth line of "West Point," which was called for in the first survey which I wished
1960 to make, namely: that of "Siege of Acre Re-Surveyed," I began at the chestnut stump and ran the fourteenth and fifteenth lines of "West Point" as called for in the patent of said tract to the end of the fifteenth line, which is designated upon the plat by the black letter "Z." I then located by actual survey the second line of the tract of land called "Siege of Acre Re-Surveyed," which was patented to McCulloh and Pennington on the 6th day of January, 1884, correcting the second line from South 52° East 126 perches to South 52° East 132 perches to satisfy the call. The fourteenth and fifteenth lines of the survey of "West Point' and the third and fourth lines of "Siege of Acre Re-Surveyed" are identical. The end of the first line of "Siege of Acre Re-Surveyed" beginning at the second line is marked upon the plat by the black letters "W.T.;" the remaining lines of the tract of "Siege of Acre Re-Surveyed" are laid down upon the plat by protraction, the beginning of said tract being shown at the black letter "S".

Q. 23. You have stated that you corrected the second line in order to gratify the call of the patent to said tract. What is the call in the patent which you gratified by that correction?

A. The call is south 52° East 126 perches and the line had to be lengthened to 132 perches.

Q. 24. To reach the point designa*y*ed at Black "Z"?

A. At black "Z"; yes sir. The point "W.T." in the Fairfax meridian is marked upon the ground by a stake and stone pile.

Q. 25. What tract did you next locate in connection with this additional survey?

1961 A. I next located a tract patented under the name of "Troas Re-Surveyed" to McCulloh and Offutt, bearing date the second day of February, 1895. This tract is shown upon the plat by the words "Troas Re-Surveyed" and the black lines numbered from 1 to 40 inclusive.

Q. 26. Please state what you did in the way of actual survey in the location of this tract?

A. I located by actual survey the third line and part of the fourth line of "Troas Re-Surveyed." The end of the second line of this survey calls for the end of the second line of "Siege of Acre Re-Surveyed" which is also at the end of the fifteenth line of the original survey of "West Point," being marked upon the plat by the black letter "Z." I then ran from "Z," or the end of the second line of "Troas," the third line North 52° West, corrected to 132 perches, to the Michler meridian, which point is marked upon the plat by the black letters "W. T." The remaining lines of the tract of "Troas Re-Surveyed" were laid down by protraction.

Q. 27. Did you run any of the fourth line of "Troas Re-Surveyed" by actual survey?

A. I did; I ran 20 perches North on the fourth line.

Q. 28. And the remaining lines were by protraction?

A. By protraction.

Q. 29. What other tract, if any, did you locate in connection with your additional survey in this case?

A. The next tract which I located was a tract called "White Rock," which was patented to Notley B. Browning, on the 23rd day of December, 1881. The tract is designated upon the plat by the words "White Rock" within the black lines numbered from 1 to 7 inclusive.

Q. 30. Please state how the beginning of said tract was designated upon the map?

1962 A. The beginning of said tract is designated at the black letter "Y."

Q. 31. What evidence had you that the point shown at black "Y" on the map was the correct point at which to locate the beginning of said tract?

A. The beginning was pointed out to me by J. B. Browning, a witness produced upon the ground in behalf of Maryland, as the beginning point, of the tract of "White Rock."

Q. 32. What lines, if any, of said tract did you locate by actual survey?

A. I ran the fourth, fifth, sixth and seventh lines of the tract called "White Rock" by actual survey, beginning said survey at the black letter "F" upon the plat, which point is a gum tree that was pointed out to me by Samuel Falkner, a witness produced on behalf of Maryland, as the gum tree standing at the end of the fourth line of "White Rock," and also the beginning of the tract of "Elder Spring." I then ran the fifth, sixth and seventh lines according to the call of the patent, correcting the seventh line from South 77° West 53 perches to South 77° West 39.5 perches to satisfy the call

for the Michler meridian. The remaining lines of this tract are laid down by protraction.

Q. 33. In order to tie this tract of land up to your other work and correctly locate it upon the plats in this case, how did you do that work?

A. I located the beginning of the tract of "White Rock" as pointed out to me by Mr. Browning, by actual survey from the point already fixed upon the ground and upon the plat and designated by the black circle and the words "Fike's Hill," situated in the Fairfax meridian. I began the location at the monument upon "Fike's Hill," desig-
1963 nated as above—that is, with a circle and the black letters "Fike's Hill"—and ran thence East 8.93 feet; South 4° 42′ East 195.4 feet; South 17° 30′ East 284.5 feet; South 16° 15′ West 335.3 feet; South 32° 33′ West 104.3 feet; South 7° 12′ East 167 feet; South 40° 2′ East 397.3 feet; South 28° 40′ East 66 feet; South 41° East 127 feet; South 25° 55′ East 84.5 feet; South 33° 30′ East 101 feet; South 32° 35′ East 118.8; South 55° 20′ East 242.6 feet; South 48° 12′ East 66 feet; South 57° 40′ East 284.5; South 46° 50′ East 276.6 feet; South 64° 40′ East 289.7 feet; South 49° 10′ East 134 feet; South 40° 32′ West 1011.1 feet; South 88° 12′ West 1107 feet; North 4° East 13.2 feet to the beginning, it being a small planted stone pointed out to me by J. D. Browning. We hadn't brush cutters and we ran the road a good part of the way.

Q. 34. Please state if you made any other locations upon the tract of land called "White Rock"?

A. I did; I went to the ruins of an old house which are within the lines of the tract of land called "White Rock," which ruins were pointed out to me by Austin Brown and John A. Reckard, witnesses produced upon the ground on behalf of the State of Maryland, in which house, Austin Brown, then constable, was assaulted by Marshall Reckard on the second day of September, 1886.

The defendant objects to the statement that this house was pointed out by Austin Brown and John A. Reckard as the house in which this assault was committed, on the ground that it is hearsay.

Q. 35. How is this house designated and shown upon your plat?

A. This point is shown upon the plat by the black letters and the black circle—the black letters "W. R." within the line of the tract designated as "White Rock." To locate this point upon the plat and to join it with the work previously done, I ran the following
1964 reference lines, beginning at the ruins of the house designated as "W. R."; The first line was run by triangulation, the course and distance of which were North 15° 12′ West 6015.25 feet to a station previously established on the tract of land designated as "Elder Spring." I then went to the station above mentioned and ran thence North 51° 17′ East 392 feet; North 32° 30′ East 1075.1 feet to the gum tree, the beginning of the tract of land called "Elder Spring," shown upon the tract at the black letter "F."

I want to correct an answer to a question which is found in the original typewritten testimony on page 121. The question asked was: "Q. Assuming that two lines were run—one by Deakins in 1789,

by a compass, from the Fairfax stone to the Pennsylvania line, and another by Lieutenant Michler in 1859, by careful astronomical observations, and you could find the actual monuments placed upon his meridian line by Lieutenant Michler, could you not, with a surveyor's compass, ascertain the relation of the old Deakins line to the Michler line upon the ground?" Which question was objected to by counsel for the plaintiff and was answered by me as follows: "A. In that case the burden of error would be—I understand you are running—or propose to run between the two lines. In that case the surveyor's compass would not be the greatest source of error; it would be in the mechanical effect of chaining, because the perpendicular would be so nearly at right angles, that the burden of error would fall upon the mechanical part of the chain."

Now, I want to correct that answer as follows: "In that case I understand you are running or propose to run between the two lines, and that the declination of the particular point upon the meridian line from which you start to run has been determined, or is known, and the proper correction for declination is applied and used
1965 in reading the magnetic course for a perpendicular offset from the meridian to the second line. In that case the surveyor's compass would be the greater source of error. It would be in the uneven chaining because the perpendicular would be so nearly at right angles that the burden of error would fall upon the mechanical part of the chain. A perpendicular to a meridian can therefore only be run when the declination at the meridian is known."

Q. 36. In the work which was done in this case on behalf of the State of Maryland, was the declination determined or not?

A. It was at a large number of points and at nearly every mile a reading was taken by the transit on the meridian which was being run.

And upon cross-examination by Mr. Price, the witness testified as follows:

Cross-examination:

Q. 1. In determining the declination was not the reading taken from the reading of the magnetic needle?

A. Not at the main stations or points.

Q. 2. Generally speaking, I mean?

A. Well, no, not what you put down as our results of the declination; but then the fact is that my transit—which was used on the line—was an excellent adjustment and it corresponded almost identically with the accurate determination made by Dr. Bower with the magnetic instruments; but in a large number of instances the declination was read from the compass.

Q. 3. Is it not true, though, that the declinations as read on the line were taken from the magnetic needle—the transit?

A. Well, I think I answered that question in answering the other question. They were taken with the transit but they were
1966 taken on the established meridian line. We did not report as to the declinations of the line the results of the reading of

the transit; they were all made by the magnetometer—a more accurate instrument.

Q. 4. That is, you took a certain reading of the declination with the reading of the magnetic needle.

A. We aimed to do that on every mile of the meridian as run.

Q. 5. And you say you did not use those?

A. Well, no, we did not use them just for information or matter of record.

Q. 6. Well, you made your record from those readings taken from the readings of the magnetic needle?

A. I made the record of those readings and I got them in my note book.

Q. 7. But you made no use of them?

A. Very seldom.

Q. 8. Well, did you make any?

A. I did in one case that I remember, in locating a point on the land tract where I retraced part of a meridian line—that is, from one station to a certain part of land tract, I applied the declination which I had read on the meridian line from the transit.

Q. 9. Was the declination determined by the magnotometer at any other than the principal stations, for triangulation on the line?

A. It was with one or two additional stations—principally upon the triangulation stations—but there were one or two or several other points where it was determined in addition; as for example, 297 feet North of the stone, and then again several hundred feet North of the Fairfax stone; and there were other points at which the declination was determined.

Q. 10. Well, when you determined any point off of the
1967 main meridian that you were running, did you always ascertain with the magnetometer the declination of the compass at that point off of the meridian line?

A. At the present time I cannot remember but one instance where I used the needle in that way. My work is done almost universally by angles, calculating the course and distance from the angle turned off right, or left from the meridian. The surveys made on the part of Maryland were not based on magnetic courses at all but on the angle lines.

Q. 11. The sub-divisions of the "Elder Spring" tract which you have indicated on the map by the several deeds which have been produced, are laid down with reference to the location of the "Elder Spring" tract by you in the first instance, are they not?

A. They are; they are within the lines of the original location.

Q. 12. And if that location is correct then these subdivision- are correct?

A. They are.

Q. 13. And if that location is not correct the sub-divisions would not be correct?

A. I followed the calls of the deeds and patents as given, certified copies of which I had.

Q. 14. You thought you did, but suppose you didn't and were mistaken, then unless the location of the "Elder Spring" tract made

by you is correct, the location of the sub-division is not correct, is it?

A. I claim the location is correct. I had the patent and I followed the calls of the patent.

Q. 15. Do you claim to be infallible in matters of surveying?

A. Oh, no.

1968 Q. 16. Is it not true that unless the location of the "Elder Spring" tract is correctly located, the sub-divisions are not correctly located?

A. They are substantially correct. I began at the beginning and there seems to be no question in the testimony as to the beginning.

Q. 17. What evidence did you have of the beginning?

A. I had the testimony of a witness produced upon the ground and was shown the tree.

Q. 18. Who was he?

A. Samuel Falkner.

Q. 19. Do you know whether he knew anything about it?

A. I cannot say that but I know what he told me.

Q. 20. So that your whole location of the "Elder Spring" tract is located upon the *ex-parte* statement of Samuel Falkner? Is that right?

A. Additional testimony; yes, sir.

Q. 21. And if he should be either mistaken or should be deceiving you, then there is no assurance that that is correct, is there?—if Falkner should be mistaken or telling you what is not correct?

A. The gum tree was shown me by several other witnesses, but we assumed that the additional testimony of Samuel Falkner was sufficient proof of the beginning. The tree was shown me by other witnesses as the beginning of "Elder Spring." I might correct that and not say "other witnesses" but other parties.

Q. 22. Then, I cannot get you to answer the question, Mr. Brown, that if the original location is incorrect the location of the sub-divisions is correct?

A. On the supposition that it is not, they would not be correct.

Q. 23. Who was it that pointed out to you the chestnut

1969 tree at the point which you have designated on your map by the letters "W. B." in the tract of land called "West Point"?

A. D. W. Wilson.

Q. 24. Was it from that chestnut tree that you located as many of the lines as you ran of the "West Point" survey?

A. It was.

Q. 25. And was it from that which you also located as many of the lines as you ran of "Siege of Acre Re-Surveyed"?

A. They were based upon those lines?

Q. 26. And based on that chestnut?

A. And based on that chestnut—that is, with the exception of the—yes, sir; they were based on that chestnut—the corrections that had to be made to the Michler line.

Q. 27. And also the lines that you ran of "Troas Re-Surveyed" are based on that chestnut?

A. They are based on that chestnut.

Q. 28. That chestnut is supposed to stand at the end of the thirteenth line of "West Point"?

A. Yes, sir.

Q. 29. What kind of a chestnut tree was that?

A. Well, it is a stump and a fallen trunk, as I remember, that are on the ground at the present time near the road which crosses the Back Bone Mountain.

Q. 30. Were there any marks on the tree or the stump?

A. I could not see any.

Q. 31. Nothing to indicate that it had been marked as a corner?

A. I could not see any at the present time; no; I had been told by Mosser himself that the chestnut tree near this old road marked the end of one of these "West Point" lines, but the witness
1970 had not been on the ground with me; he simply told me so and so.

The defendant objects to the statement of the witness as to what was told him.

Q. 32. This tract is described in the patent as "Beginning at a bounded white oak, cucumber and maple, standing North 62 degrees and a half degree East, 363 perches from the three-mile tree on a line drawn North from the head of the North Branch of the Potomac River." Did you make any attempt to locate the beginning corner of the "West Point" survey from the call in the patent?

A. I did not.

Q. 33. According to the way you have that laid down on your map, how do you designate the beginning corner of the "West Point" survey?

A. By the black letter "T".

Q. 34. Now, is that black letter "T" "North 62 degrees and a half degree East, 363 perches from the three-mile point on a line drawn North from the head of the North Branch of the Potomac River?"

A. I do not know where the three-mile tree may have stood; I made no survey from the tree and I know of no such tree personally.

Q. 35. Is it opposite the three-mile limit, from the head of the North Branch of the Potomac River?

Exception by counsel for the State of Maryland.

A. I cannot say that; I made no survey to determine that.

Q. 36. Can't you tell by applying your instruments on the plat?

A. I could scale it and see.

Q. 37. Will you do so?

Witness makes measurement.

A. It is 16½ inches to "W. T." Now, let me have your question again.

1971 Q. 38. North 62½° East: where would the three-mile point come to.

A. It is just about 17000 feet to the point "W. T." It ought to come about half way between the black letters "X. V." and "W. T." on the plat, or the three miles would be at the end of 15840 feet.

Q. 39. Well, now, taking that point on the Michler line as being three miles from the head of the North Branch of the Potomac, is the point "T" which you have indicated as the beginning of the "West Point" survey, North 62½° East 363 perches from that point?

Exception by counsel for the State of Maryland.

A. It is approximately 306 perches.

Q. 40. Three hundred and six, only?

A. That is what it scales.

Q. 41. What is the course?

A. I could not give the course without a protractor.

Q. 42. Then, if that is the correct course it is *the* some 57 poles too close to the line, isn't it, that you have located it?

A. It would be closer if the course is correct there.

Q. 43. Well, if the beginning corner is 57 poles too close to the line, that cannot be the line that the tract was located by, can it?

A. I did not locate the beginning by actual survey; I located the end of the thirteenth line call at the chestnut.

Q. 44. You did that by what somebody told you?

A. I did; I had a witness.

Q. 45. Now, you had a record here in the patent itself that would give you an infal-ible method of ascertaining that beginning corner, didn't you? By running three miles North on that North line and then North 62½° East 363 perches, you would expect to find the beginning corner, wouldn't you?

1972 A. Well, there is quite a question as to which was the first source of the Potomac River; and an object which is pointed out by a witness on the ground is additional testimony as being one of the corners of the original tract of "West Point," is much closer testimony to get at the location than to have gone farther off.

Q. 46. Don't you usually, in Maryland, in your surveying, locate your tracts of land from the beginning corner?

A. We locate from the beginning and satisfy every call after the beginning. In the present case the lines which I wish to locate of the Junior tracts were effected by the thirteenth line and not by the beginning.

Q. 47. The accuracy of that location which you have made of all of those tracts depends entirely upon whether or not that chestnut is the chestnut called for at the end of the thirteenth line of "West Point," isn't it?

A. The Western lines are laid down from the meridian of Fairfax stone.

Q. 48. But the point where it would strike that meridian is determined by that chestnut, isn't it?

A. That would be determined by the chestnut; yes, sir.

Q. 49. Hasn't there been considerable dispute as to the correct location of that survey of "West Point" amongst the land owners of that section?

A. Why, I do not know of it. The location was accepted, or has been, for years, in the junior patents calling for the lines of "West Point" as here located.

Q. 50. Haven't there been disputes about the location of these junior patents which you have been testifying about?

A. Not that I know of, in either one of these, except pos-
1973 session claimed which was excluded when the survey of "Troas Re-Surveyed" was made.

Q. 51. Now, take the patent referred to in your testimony of the tract called "Siege of Acre Re-Surveyed." This recites, "That Richard S. McCulloh, of Garrett county, and William C. Pennington, of Baltimore City, on the 6th day of January, 1884, obtained out of the land office of Maryland a special warrant of re-survey to re-survey a tract or parcel of land called "Siege of Acre," lying in Garrett county, aforesaid." Have you a copy of the original patent of the tract called "Siege of Acre?"

A. I have not.

Q. 52. Have you seen it?

A. Not that I remember of now.

Q. 53. This patent further recites that, "In pursuance of a re-survey made of the aforesaid land and the certificate thereof returned, the same was found to contain 35 acres and a half of an acre of vacant land added to the quantity of 828 acres and three-fourths of an acre, and called "Siege of Acre Re-Surveyed." Do you know where that 35½ acres of vacant land lay as taken into this resurvey?

A. Only by supposition; I know by supposition.

Q. 54. What is your supposition?

A. It would be on the Western portion of the tract.

Q. 55. East of the Michler line?

A. The whole tract is East of the Michler line.

Q. 56. And this 35 acres would be lying along that Michler line?

A. I do not know it for a fact because I haven't seen the patent of "Siege of Acre;" I do not know what that might cover.

Q. 57. This "Siege of Acre Re-Surveyed" calls for "Be-
1974 ginning for the outlines of the whole at a stake standing West 8 perches from the end of the first line of Lot 1102, and on the dividing line between the States of Maryland and West Virginia as now recognized and established, one mile and 174½ perches North from Fairfax Stone." Did you find the end of the first line of Lot 1102?

A. I did not locate that?

Q. 58. You did not try?

A. No.

Q. 59. Why didn't you?

A. I only ran three lines by actual survey of the tract of "Siege of Acre Re-Surveyed."

Q. 60. I know, but you were trying to get the correct location of that "Siege of Acre Re-Surveyed," were you not? Was that what you were trying to do?

A. Yes, sir; to make a correct location.

Q. 61. Well, wouldn't it naturally occur to you that the way to find the correct location was to find the beginning point, and wouldn't that be the first thing that would suggest itself to you?

A. In this case we wished to put down the several tracts with as little field work as was absolutely necessary, to locate the tracts upon the ground, and place them upon the map, and by starting on the lines of "West Point," these several tracts had mutual lines so that we could locate these tracts in part much more quickly by running those lines than to have gone a much longer distance.

Q. 62. In what way have you indicated on your map the beginning corner of the "Siege of Acre Re-Surveyed?"

A. By the black letter "S."

Q. 63. Then, if that is correctly located, the end of the first line of Lot 1102 would be eight perches West of the point "S,"

1975 wouldn't it?

A. That is what it calls for—a distance of eight perches between the two points.

Q. 64. Well, wouldn't it have to be?

A. Yes, sir.

Q. 65. You could not begin anywhere except eight perches West of Lot 1102, could you, correctly?

A. No.

Q. 66. Now, will you indicate on your map where the point eight perches West of the letter "S" would be?

A. Well, it would be close to the Eastern portion of the black circle at the letter "S;" it would be very close to that point—the Eastern limit of that circle at the black letter "S."

Q. 67. Well, do you know whether that Lot 1102 does actually lie there?

A. I do not know; I haven't located it.

Q. 68. This patent of "Siege of Acre Re-Surveyed" after running what is called the dividing line between the States of Maryland and West Virginia, with a variation of 2¼° to the right North 500 perches, then runs South 52° East and 126 perches to the end of the fifteenth line of "West Point," patented to John Swann on the 24th day of June, 1793; then reversing its lines and running with its lines to the end of the seventh line of "West Point," then calls to run South 38° 45′ East 147 perches to the end of the second line of Lot 1157." Did you locate Lot 1157?

A. Not in this survey.

Q. 69. Have you ever done it?

A. Not in relation to the boundary line of the State at all; I have on another survey.

1976 Q. 70. Well, with reference to "West Point?"

A. No, not with reference to "West Point."

Q. 71. Well, according to the location which you made of it would it fit there at the corner of "West Point?"

Question objected to by counsel for the State of Maryland.

A. No, I could not say that.

Q. 72. Well, then, the lines seem to run from that on with the lines of the various lots—1156, 1153, 1152, 1104, 1150,—and then with the second line of 1102 reversed and extended West 101½

perches. I understood you to say that you have never located that Lot 1102?

A. Not 1102; no, sir.

Q. 73. Have you a copy of these Military Lots?—1101 and 1102?

A. No, I have not.

Q. 74. Not here?

A. Not here; I have them at home but not in connection with this case at all.

Q. 75. How far is the point "S" which you have designated as the beginning of "Siege of Acre Re-Surveyed" from the point where the Michler meridian line crosses the Potomac River?

A. From the map it scales 4250 feet.

Q. 76. How many perches would that be?

A. About 257 perches.

Q. 77. The second line of this "Siege of Acre Re-Surveyed" calls to run South 52° East 126 perches to the end of the fifteenth line of "West Point." You have testified that you corrected that line—the distance of that line—making it 132 perches instead of 126 as called for.

A. I have.

1977 Q. 78. Did you find that correction necessary in order to reach the Michler line from the "West Point" survey?

A. I did.

Q. 79. You added six poles?

A. Yes, sir.

Q. 80. The distance would have stopped—reversing that line from the line of "West Point" as located by you—would have stopped six poles short of the Michler line, wouldn't it?

A. Yes, sir; the Michler line as reproduced by Dr. Bower; that is the line which we took the reference to.

Q. 81. Well, did that differ there from the original?

A. It did not at the Back Bone Mountain, but it was the points established by Dr. Bower from which we ran to determine the intersection of the second line of "Siege of Acre Re-Surveyed" with the Michler line or the Fairfax meridian.

Q. 82. You assumed, then, that when the patent called for a point on the dividing line between the States of Maryland and West Virginia as now recognized and established, that that dividing line was intended to be the Michler line?

A. It was intended to be the Michler line.

Q. 83. And therefore you went to it?

A. I did.

Q. 84. But to get to it you had to lengthen the line of the survey as given in the patent?

A. I did.

Q. 85. The patent of the tract called "Troas Re-Surveyed" calls for an original tract called "Troas." Have you a copy of that original tract?

A. No, I have not.

1978 Q. 86. This re-survey is said in the patent to contain 933¼ acres with 78 acres and 108 perches of vacant land added. Do you know where that land lies?

A. Not from any knowledge that I have.

Q. 87. Isn't it your understanding that that is the territory between what is known as the old Maryland line and the Michler line?

Exception by counsel for the State of Maryland.

A. Well, I had supposed that vacancy to be—upon reading the patent—on the Western portion of the tract of "Troas Re-Surveyed," but I had no knowledge of where it was.

Q. 88. The patent calls—after running various lines it runs South 38° West 20 perches to the third line of the tract of land called "Siege of Acre," and reversing it North 47° West 145 perches to a post and stone pile in the Michler State line dividing the States of Maryland and West Virginia, (105 perches to the inner line of said vacancy). Doesn't that indicate that that vacancy was along the Michler line?

A. It does; I had forgotten that wording in the deed.

Q. 89. This survey calls to begin at the bounded white oak and cucumber trees, beginning trees of a tract of land called "West Point." I believe you have already testified you made no effort to locate that point on the ground?

A. I did not locate the point black "T" on the ground.

Q. 90. You located this survey of "Troas Re-Surveyed" from the chestnut pointed out as the end of the thirteenth line of the "West Point" tract connecting it up with the "Siege of Acre" on the Michler line?

A. It is based on that, yes, sir; from those points.

Q. 91. What did you say was the beginning corner of the
1979 tract of land called "White Rock"—how designated on the map?

A. It is designated by the black letter "Y."

Q. 92. That point is located by you from the point "F" which was pointed out to you by Samuel Falkner?

A. No; that point is located from a previously established point—the monument upon the top of Fike's Hill.

Q. 93. Is that called for in the patent?

A. No; but to locate it on the map; that is the way it is done.

Q. 94. Well, but the tract of land as located by you?

A. The tract of land is located from the end of the fourth line which calls for a gum tree, that gum tree being the beginning of "Elder Spring" as shown by the witness. The tract is located by this means—the beginning of the tract at black "Y" is located with reference to Fike's Hill.

Q. 95. Well, you mean its point in the Michler line is located.

A. Yes, sir; the point in the Michler line.

Q. 96. Did you find anything at that point?

A. I found a small stone.

Q. 97. Planted and indicating that it was a corner in any way?

A. It was shown to me as a corner.

Q. 98. Who showed it to you?

A. It was shown to me by J. D. Browning, a witness on the ground.

Q. 99. Who is J. D. Browning?
A. He lives at Cranesville.
Q. 100. You stated that you ran the fourth, fifth, sixth and seventh lines of this tract called "White Rock"?
A. I did, by actual survey.
Q. 101. And that in running the seventh line you shortened the distance called for from 53 perches to 39.5 perches. Why did you do that?
1980 A. Because of the intersection of the Michler meridian at that point with the survey as being made.
Q. 102. You reached the Michler line at the end of 39.5 perches rather than the end of 53 perches?
A. Yes, sir.
Q. 103. In this case you assumed that the Virginia line called for was the Michler meridian line?
A. We did.

There not being time to complete these depositions the further taking of the same is adjourned and continued until to-morrow, July 26th, at 9 o'clock a. m. at the office of E. H. Sincell in the town of Oakland.

BENJAMIN F. SELBY,
Notary Public.

OAKLAND, MARYLAND, *July* 26, 1907.

Met pursuant to the foregoing adjournment.
Present: The same counsel who appeared on the previous day. The taking of these depositions is resumed.

AUSTIN BROWN, a witness produced on behalf of the State of Maryland, having been first duly sworn, deposes and says as follows:

Deposition of Austin Brown.

Examination by Mr. SINCELL:

Q. 1. State your name?
A. Austin Brown.
Q. 2. What is your age?
A. Forty-seven.
Q. 3. Your residence?
A. Oakland, Garrett county, Maryland.
1981 Q. 4. And your occupation?
A. Well, I am in the lumber business, now.
Q. 5. You have stated that your residence is in Oakland. How far did you have to come to attend the taking of these depositions?
A. Thirty-three miles.
Q. 6. What official position, if any, did you hold in Garrett county, Maryland, in September, 1886?
A. I was constable.
Q. 7. For what election district in Garrett county?
A. Selbysport Election District No. 2.

Q. 8. State, if you will, whether or not Selbysport District in Garrett county borders upon the territory of West Virginia?

A. Yes, sir; it borders on the territory of West Virginia.

Q. 9. Which side of the district borders on West Virginia?

A. The West side.

Q. 10. In the course of the discharge of your duties as constable in Election District No. 2, in September, 1886, did it become necessary for you to serve any papers on one Marshall Reckard?

A. Yes, sir; a warrant was placed in my hands to serve on Marshall Reckard at that time.

Q. 11. What was the nature of that warrant?

Question objected to by counsel for the State of West Virginia, because the warrant is the best evidence.

A. The warrant was for stealing hogs, I think.

Q. 12. Where was Marshall Reckard living at what time?

A. In No. 2 District—or we supposed it was—Garrett county, on a ridge they call Pigeon Ridge, I think. I know we passed over Pigeon Ridge.

Q. 13. Did you go to his house for the purpose of serving that warrant?

1982 A. Well, I didn't go to his house at that time. The warrant had been served on him by my father and he got away from him and I went back after him. He was committed to jail and I went back after him with a commitment.

Q. 14. Did you find him at home?

A. Yes, sir.

Q. 15. What occurred when you went to his house for the purpose of arresting him?

A. Well, I caught him at the door and his wife just came from the spring with a bucket of water. We were both standing in the door and he says, "Well, I have to go to Oakland with the constable"; and she says,—I stepped on the ground and he was standing up in the door and I stepped away from him to let her in the house and when I stepped down, why, she says, "You are not going"; and he jumped behind the door and grabbed up an ax. I supposed it was a club, as it was dark and I could not see; and when I stepped inside he let drive with the ax and hit me with a double headed ax.

Q. 16. You say he cut you with an ax?

A. Yes, sir; he cut me with an ax right over the heart, in the breast.

Q. 17. What then occurred?

A. After I received the blow I jumped out of the door and he slammed the door to and got his rifle and knocked the chinking out of the house and tried to shoot us. Mr. Falkner, I believe, broke his gun and that ended that business.

Q. 18. Which Falkner was that?

A. Samuel Falkner.

Q. 19. When did this occur?

A. On September 2nd, 1886.

Q. 20. Were any legal proceedings taken in Garrett county,

1983 Maryland, against Reckard for that assault upon you?

Question objected to by counsel for the State of West Virginia as the record is the best evidence.

A. Yes, sir.

Q. 21. Have you at any time been upon the ground, where this assault took place, with Mr. W. McCulloh Brown, the surveyor in this case on behalf of the State of Maryland?

A. Yes, sir.

Q. 22. When were you on the ground with Mr. Brown?

A. That was last year but I do not know the date; I haven't got that fixed.

Q. 23. About what time last year was it?

A. Well, I really forget.

Mr. BROWN: It was in August last.

WITNESS: Was it in August? Well, I know it was in the Summer time.

Q. 24. Did you point out on that occasion to Mr. Brown, the house or place where the house stood, at which this assault occurred?

A. Yes, sir.

Q. 25. Will you please look at the map filed in this case on behalf of the State of Maryland and say where and how that spot is designated upon this map?

A. I look at said map and state that this is the point where the crime was committed, or the assault (indicating).

Q. 26. How is it designated upon the map—by what black letters?

A. By "W. R." and a circle.

Q. 27. And after this assault took place did you at any time shortly thereafter go upon the ground and measure the distance from that house West to the Michler line?

A. Yes, sir.

1984 Q. 28. Who was with you at that time?

A. Peter Chisolm and R. T. Browning.

Q. 29. Do you remember the perpendicular distance from that house to the Michler line?

A. No, I do not; I haven't got the amount of feet; we measured it with a tapeline but I have forgotten it.

Q. 30. Can you approximate the distance?

A. Well, it is several hundred feet.

Q. 31. Will you please look at the paper now shown you, marked "Transcript of Record in the case of the State of Maryland *vs.* Marshall Reckard," and state whether or not that is the record of the proceedings had in the circuit court for Garrett county, Maryland, against Marshall Reckard for the assault he committed upon you?

Question objected to by counsel for the State of West Virginia.

A. Yes, sir; that is a transcript of that record.

Q. 32. Will you please now file this transcript of record as a part of your evidence?

A. I will and I now do, marked "Exhibit Austin Brown."

Q. 32. What other official position, if any, have you held in Garrett county?

A. I was elected sheriff in the Fall of 1895.

And upon cross-examination by Mr. Price, the witness testified as fol-ows:

Cross-examination:

Q. 1. Mr. Brown, you say you had a warrant for the arrest of Marshall Reckard??

A. Yes, sir; the warrant was placed in my hands; it was served by my father in the first place.

1985 Q. 2. Who issued that warrant?

A. I think it was Squire Gonder.

Q. 3. Where did he reside?

A. In Oakland, Garrett county, Maryland.

Q. 4. He was a justice of the peace of Garrett county, Maryland, residing at Oakland?

A. Yes, sir.

Q. 5. Where did you live at that time?

A. I lived near Selbysport, Garrett county, Maryland, No. 2 District.

Q. 6. Whose hogs were alleged to have been stolen?

A. B. F. Friend's.

Q. 7. Where did he live?

A. Well, he lived in District No. 2, near Reckard's—about two or three miles from Reckard's.

Q. 8. Which direction from Reckard's?

A. Why, East or Northeast, rather.

Q. 9. He lived East of what is known along there as the old Maryland line—Friend?

A. Friend? Yes, sir; he lived East of the West Virginia line.

Q. 10. And East of what is known as the old line?

A. Yes, sir; he lived about two miles as near as I can tell.

Q. 11. Two miles from the Michler line?

A. Yes, sir; something near that.

Q. 12. There was no dispute as to where he lived?

A. No, I do not know that there was any dispute at any time when I went there.

Q. 13. Well, did Reckard,—when you went there—claim that he was not obliged to go to Oakland—that he lived in Preston county, West Virginia?

1986 A. No, sir; he never intimated anything of the kind to me or claimed where he lived. There was only a word or two spoken.

Q. 14. Did you arrest him on that occasion?

A. Yes, sir.

Q. 15. And brought him to Oakland?

A. And brought him to Oakland. Well, I didn't bring him but I had him brought.

Q. 16. Who was with you?

A. A man by the name of J. S. Myers and Newton Savage.

Q. 17. And Samuel Falkner?

A. Well, he happened along there; he just happened to come along through there from his work; he just happened to come along

there when this occurred; I don't suppose it was more than a minute or so afterwards when he passed through.

Q. 18. So that there were three of you that went to the house?

A. Three with myself. Well, they were not all at the house; we were all stationed around the house for fear he would run away. I was the first one there and when I got hit with the ax I jumped out and jumped against Savage; he just happened to come around the corner of the house at that time and I jumped out of the door and he was just coming in the door.

Q. 19. Reckard remained in jail here, then, until he was tried under the indictment which has been filed with your deposition?

A. Well, I forget now whether he was bailed out or not, as it has been a good while ago, but he was in jail, I know that much; and he was tried by the court.

And upon re-direct examination by Mr. Sincell, the witness testified as follows:

1987 Redirect examination:

Q. 1. You have stated that R. T. Browning and Peter A. Chisolm assisted you in measuring the distance from the Reckard house West to the Michler line. At the time that measurement was made, was there anything on the ground to indicate where the Michler line was?

A. Yes, sir; we found the old stakes that had been driven by the surveyors and their help, and the openings or cuttings were very plain.

Q. 2. State whether or not Peter A. Chisolm was in the corps that helped Lieutenant Michler to locate that line?

A. He claimed that he was with them and pointed out the stakes and cuttings.

And upon recross-examination by Mr. Price, the witness testified as follows:

Recross-examination:

Q. 1. You do not remember the distance that you measured?

A. No, I do not; but it was quite a distance; it was several hundred feet—probably nearly a quarter of a mile, I believe, from my best recollection.

Q. 2. Is the house still standing?

A. No, sir; I think it was destroyed by fire or something; it is not standing there any more; the old marks are there yet.

Q. 3. When you were there with Mr. Brown last Summer the house was not standing?

A. No, sir; it had been destroyed.

Q. 4. Had you been there at any time since the assault was committed until you went there with Mr. Brown?

A. No, I never was there from the time the assault was committed until last Summer, but I recognized an apple tree that stood
1988 there and there were some stones there and everything was very plain to me.

Counsel for the State of Maryland now introduces in evidence the Charter of Maryland granted by the English Crown to Lord Baltimore, in the year 1632, marked "Exhibit Brown No. 1."

Also,

An Act of the General Assembly of Maryland passed at the January session, 1890, chapter 563, marked "Exhibit Brown No. 2."

Also,

The First Constitution of Virginia adopted June 29th, 1776, marked "Exhibit Brown No. 3."

Also,

An Act of the General Assembly of Virginia passed on the 26th day of March, 1858, marked "Exhibit Brown No. 4."

Also,

An Act of the General Assembly of Maryland passed May 27th, 1852, marked "Exhibit Brown No. 5."

Also,

Resolutions adopted by the first Constitutional Convention of Maryland in October, 1776, marked "Exhibit Brown No. 6."

Also,

Exhibits "A" to "G", both inclusive, filed with the answer of the State of Maryland to the cross-bill of the State of West Virginia in this cause, marked "Exhibit Brown No. 7."

Also,

The original report of Dr. L. A. Bowers, Astronomer and Magnetician, employed by the State of Maryland to run the meridian lines in this cause, marked "Exhibit Brown No. 8."

Also,

1989 Patent for a tract of land called "Royal Charlotte" granted by the State of Maryland to Thomas Hall on the 14th day of May, 1787, shown upon the plats in this cause, marked "Exhibit Brown No. 9."

Also,

Certified copy of a deed from Thomas Hall to Robert Morris, dated the 25th day of March, 1789, conveying *inter alia* a tract of land called "Royal Charlotte" marked "Exhibit Brown No. 10."

Also,

Certified copy of a deed from Robert Morris and wife to George and John Graham, Executors, dated the 7th day of September, 1797, conveying *inter alia* the tract of land called "Royal Charlotte" marked "Exhibit Brown No. 11."

Also,

Certified copy of a deed from George and John Graham, Executors, to Samuel Vincent, Administrator, &c., dated the 26th day of May, 1814, conveying *inter alia* the tract of land called "Royal Charlotte" marked "Exhibit Brown No. 12."

Also,

A certified copy of a deed from Samuel Vincent to William Lorman, dated the 15th day of November, 1816, conveying *inter alia* the tract of land call- "Royal Charlotte" marked "Exhibit Brown No. 13."

Also,

Certified copy of a deed from William Lorman to Robert Oliver, dated the 1st day of May, 1824, conveying *inter alia* the tract of land called "Royal Charlotte" marked "Exhibit Brown 14."

Also,

1990 Certified copy of a deed from Robert Oliver to Charles Oliver, dated the 10th day of January, 1834, conveying *inter alia* the tract of land called "Royal Charlotte" marked "Exhibit Brown No. 15."

Also,

Certified copy of a patent for a tract of land called "The Promised Land," granted to Thomas Johnson by the State of Maryland on the 6th day of December, 1786, located upon the plats in this case and marked "Exhibit Brown No. 16."

Also,

Certified copy of a patent for the tract of land called "Thomas and Ann," granted to Thomas Johnson by the State of Maryland on the 6th day of December, 1786, located upon the plats in this cause, marked "Exhibit Brown No. 17."

Also,

Certified copy of the will of Thomas Johnson, duly of probate and recorded in the Orphans' Court for Frederick county, Maryland, dated the 4th day of July, 1818, and probated the 28th day of December, 1819, marked "Exhibit Brown No. 18."

Also,

Certified copy of a deed from Joshua Johnson and T. J. Graham, devisees of Thomas Johnson, to Robert Oliver, dated the 20th day of July, 1826, conveying the tracts of land called "The Promised Land" and "Thomas and Ann," marked "Exhibit Brown No. 19."

Also,

Certified copy of a deed from Robert Oliver to Charles Oliver, dated January 10th, 1834, heretofore offered as Exhibit Brown No. 15, conveying *inter alia* the tracts of land called "The Promised Land" and "Thomas and Ann."

Also,

1991 Certified copy of a patent granted by the State of Maryland to Baker Johnson for a tract of land called "Kindness," located upon the plats in this cause, dated the 23rd day of October, 1793, marked "Exhibit Brown No. 20."

Also,

Certified copy of the last will and testament of Baker Johnson, deceased, duly of probate and recorded in the Orphan's Court for Frederick county, Maryland, dated the 22nd day of February 1809, and probated the 11th day of February 1811, marked "Exhibit Brown No. 21."

Also,

Certified copy of a deed from William Ross and wife, devisees of Baker Johnson, to Robert Oliver, dated the 20th day of July, 1826, conveying the tract of land called "Kindness," marked "Exhibit Brown No. 22."

Also,

Certified copy of a deed from Robert Oliver to Charles Oliver,

dated January 10th, 1834, heretofore offered as "Exhibit Brown No. 15, conveying *inter alia* the tract of land called Kindness."

Also,

Certified copy of patent to George Robins Hayward and Thomas Hayward for a tract of land called "The Diadem," granted by the State of Maryland on the 3rd day of December, 1791, located upon the plats in this cause and marked "Exhibit Brown No. 23."

Also,

Certified copy of a deed from George Robins Hayward and Thomas Hayward to Mary Bond, dated the 1st of August 1794, con-
1992 veying the tract of land called "The Diadem" marked "Exhibit Brown No. 24." Also exhibts 24 A and 24 B.

Also,

Certified copy of the last will and testanent of Abraham Van Bibber dated the 11th day of June 1805, and probated the 14th day of September 1805, and duly of probate andrecorded in the office of the Rehistrar of Wills of Baltimore county, Maryland, marked "Exhibit Brown No. 25."

Also,

Certified copy of a deed from Sarah Ann Jolly Campbell, devisee of Abraham Van Bibber, to John Crane, dated the 26th day of September, 1842, conveying the tract of land called "The Diadem," marked "Exhibit Brown No. 26."

Also,

Certified copy of a deed from William I. Wallis, devisee of Abraham Van Bibber, to John Crane, dated the 4th day of September, 1839, conveying the tract of land called "The Diadem," marked "Exhibit Brown No. 27."

Also,

Certified copy of a patent for a tract of and called "Elder Spring," granted to Francis Deakins by the State of Maryland on the 15th day of February, 1786, for 411 acres, located upon the plats in this cause and marked "Exhibit Brown No. 28."

Also,

Certified copy of the last will and testument of Francis Deakins, duly of probate and recorded in the offic of the Registrar of Wills of the District of Columbia, dated the 24th day of Sept. 1804 and probated the 14th day of November, 1804 marked "Exhibit Brown No. 29."

Also,

1993 Certified copy of a confirmatoy deed from John Hoye, devisee of Francis Deakins, to William W. Hoye, dated the 1st day of September, 1834, conveying *nter alia* the tract of land called "Elder Spring" marked "Exhibit Brown No. 30."

Also,

Certified copy of a deed from William W. Hoye and wife, to Daniel Raymond, dated the 14th day of January, 1833, conveying 111 acres of the tract called "Elder Sping," designated upon the plat in this cause as "Sub-Division E. A." of said tract, marked "Exhibit Brown No. 31."

Also,

Certified copy of a deed from John M. Carlton, Sheriff, to Ralph Thayer, dated the 20th day of April, 1846, conveying said 111 acres designated on the plat as "Sub-Division E. A." of the tract called "Elder Spring" and marked "Exhibit Brown No. 32."

Also,

Certified copy of the record of proceedings in No. 148 Trials, April Court, 1858, in the circuit court for Allegany county, Maryland, being the case of Fairall *vs.* Thayer, marked "Exhibit Brown No. 33."

Also,

Certified copy of a deed from Hanson Willison, Sheriff, to Truman Fairall, dated the 5th day of January, 1864, conveying the title of the said Ralph Thayer to the aforesaid 111 acres of the tract called "Elder Spring" designated upon the plats in this cause as "Sub-Division E. A." of said tract, marked "Exhibit Brown No. 34."

Also,

Certified copy of a deed from Truman Fairall and wife to Samuel Falkner, dated the 5th day of November, 1864, conveying 111
1994 acres of the tract called "Elder Spring," designated upon the plats in this cause as "Sub-Division E. A." of said tract, and marked "Exhibit Brown No. 35."

Also,

Certified copy of a deed from Samuel Falkner to Martha J. Falkner, his wife, dated the 10th day of March, 1894, conveying *inter alia* the said 111 acres of the tract called "Elder Spring" designated upon the plats in this cause as "Sub-Division E. A." of said tract, marked "Exhibit Brown No. 36."

Also,

Certified copy of a deed from William W. Hoye and wife, to John Kelley, dated the 14th day of January, 1833, conveying fifty acres of the tract called "Elder Spring," designated upon the plats in this cause as "Sub-Division E B." of said tract, marked "Exhibit Brown No. 37."

Also,

Certified copy of a deed from John Kelley and wife, to John Ervin, dated the first day of July, 1837, conveying the aforesaid fifty acres of the tract called "Elder Spring," designated upon the plats in this cause as "Sub-Division E. B." of said tract, marked "Exhibit Brown No. 38."

Also,

Certified copy of a deed from John Ervin and wife to Henry Thomas, dated the 25th day of January, 1841, conveying the aforesaid fifty acres of land designated as "Sub-Division E. B." of the tract called "Elder Spring," marked "Exhibit Brown No. 39."

Also,

Certified copy of a deed from Henry Thomas and wife to John and George Evans, dated the 17th day of May, 1853, convey-
1995 ing the aforesaid fifty acres of the tract called "Elder Spring," designated upon the plats in this cause as "Sub-Division E. B.," marked "Exhibit Brown No. 40."

Also,

Certified copy of a deed from John and George Evans to Amos

Thomas, dated the 10th day of April, 1860, conveying the aforesaid fifty acres of the tract called "Elder Spring," designated upon the plats in this cause as "Sub-Division E. B." of said tract, marked "Exhibit Brown No. 41."

Also,

Certified copy of a deed from Amos Thomas and wife to Daniel Bitner, dated the 26th day of February, 1863, conveying the aforesaid fifty acres of the tract called "Elder Spring," designated on the plats in this cause as "Sub-Division E. B." marked "Exhibit Brown No. 42."

Also,

Certified copy of a deed from Daniel Bitner and wife, to Jeremiah Bitner, dated the 18th day of September, 1866, conveying the aforesaid fifty acres of the tract called "Elder Spring," designated as "Sub-Division E. B." of said tract on the plats in this cause, marked "Exhibit Brown No. 43."

Also,

Certified copy of deed from William W. Hoye and wife, to James Ervin, dated the 9th day of June, 1832, for fifty acres of the tract called "Elder Spring," designated upon the plats in this cause as "Sub-Division E. C." of said tract, marked "Exhibit Brown No. 44."

Also,

Certified copy of deed from James Ervin and wife to
1996 Michael Chriss, dated the 2nd day of April, 1836, conveying the aforesaid fifty acres of the tract called "Elder Spring," designated as "Sub-Division E. C." of said tract upon the plats in this cause, marked "Exhibit Brown No. 45."

Also,

Certified copy of a deed from Michael Chriss and wife, to Henry Thomas, dated the 6th day of May, 1839, conveying *inter alia* the above fifty acres of the tract called "Elder Spring," designated upon the plats in this cause as "Sub-Division E. C." of said tract, marked "Exhibit Brown No. 46."

Also,

Certified copy of a deed from Henry Thomas and wife to Thomas Lewis, dated the 5th day of October, 1846, conveying *inter alia* the above fifty acres of the tract called "Elder Spring," designated upon the plats in this cause as "Sub-Division E. C." of said tract, marked "Exhibit Brown No. 47."

Also,

Certified copy of a deed from Thomas Lewis and wife to Lewis Pritchard, dated the 29th day of March, 1847, conveying the above fifty acres of the tract called "Elder Spring," designated upon the plats in this cause as "Sub-Division E. C." of said tract, marked "Exhibit Brown No. 48."

Also,

Certified copy of a deed from David Kelley and wife, to Lewis Pritchard, dated the 5th day of October, 1846, conveying 100 acres of the tract called "Elder Spring," designated upon the plats in this cause as "Sub-Division E. E." of said tract, marked "Exhibit Brown No. 52A.

Also,

1997 Certified copy of a deed from Lewis Pritchard and wife to William Phillips, George Spill and Thomas Spill, dated the 17th day of November, 1853, conveying the above 100 acres of the tract called "Elder Spring," designated upon the plats in this cause as "Sub-Division E. E.," of the said tract called "Elder Spring," marked "Exhibit Brown No. 52 B."

Also,

Certified copy of a deed from William Phillips and wife to George and Thomas Spill, dated the 8th day of October, 1873, conveying the interest of the said Phillips in and to the above 100 acres of land designated upon the plats in this cause as "Sub-Division E. E.," of the tract called "Elder Spring," marked "Exhibit Brown No. 52 C."

Also,

Certified copy of a deed from Mary Van Sickel and others, heirs at law of Lewis Pritchard, to Cornelius W. Friend, dated the 15th day of October, 1864, conveying the above fifty acres of the tract called "Elder Spring," designated upon the plats in this cause as "Sub-Division E. C." of said tract, marked "Exhibit Brown No. 49."

Also,

Certified copy of a deed from Sarah Friend and others, heirs at law of Cornelius W. Friend, to Marshal Friend, dated the 9th day of February, 1884, conveying the above fifty acres of the tract called "Elder Spring," designated upon the plats in this cause as "Sub-Division E. C.," of said tract, marked "Exhibit Brown No. 50."

Also,

Certified copy of a deed from William W. Hoye and wife to David Kelley, dated the 19th day of December, 1831, conveying

1998 200 acres of the tract called "Elder Spring," designated upon the plats in this cause as "Sub-Division E D. and E. E.," of said tract, marked "Exhibit Brown No. 51."

Also,

Certified copy of a deed from David Kelley and wife, to Michael Chriss, dated the 15th day of April, 1836, conveying 100 acres of the above land as conveyed by Hoye to Kelley, it being "Sub-Division E. D.," upon the plats in this cause, and marked "Exhibit Brown No. 52."

Also,

Certified copy of a deed from Michael Chriss and wife to Henry Thomas, dated the 6th day of May, 1839, heretofore offered and marked "Exhibit Brown No. 46," conveying the above 200 acres as conveyed by Hoye to Kelley, and being Sub-Divisions E. D. and E. E." of the tract called "Elder Spring" upon the plats in this cause.

Also,

Certified copy of a deed from Henry Thomas and wife, to Thomas Lewis, dated the 5th day of October, 1846, heretofore offered and marked "Exhibit Brown No. 47," conveying the aforesaid "Sub-Divisions E. D. and E. E." of the tract called "Elder Spring" as shown upon the plats in this cause.

Also,

Certified copy of a tract of land called "Cherry Hill," containing

384 acres, granted by the State of Maryland to William Deakins, Jr., on the 15th day of February, 1786, located on the plats in this cause and marked "Exhibit Brown No. 53."

Also,

Certified copy of a deed from William Deakins, Jr., to Roger Perry, dated the 30th day of January, 1798, conveying the
1999 aforesaid tract called "Cherry Hill," containing 384 acres marked "Exhibit Brown No. 54."

Also,

Certified copy of a deed from George Bruce, Sheriff, to John King, dated the 29th day of May, 1822, conveying *inter alia* the aforesaid tract called "Cherry Hill," containing 384 acres, marked "Exhibit Brown No. 55."

Also,

Certified copy of a patent for a tract of land called "The Granary," granted by the State of Maryland to Charles Peale Polk and Raphael Peale, for 331½ acres, dated the 10th day of January, 1788, located upon the plats in this cause and marked "Exhibit Brown No. 56."

Also,

Certified copy of a patent for a tract of land called "Ashby's Cove," granted by the State of Maryland to Thomas Hall, dated the 14th day of May, 1787, for 250 acres of land located upon the plats in this cause, marked "Exhibit Brown No. 57."

Also,

Certified copy of a patent for a tract of land called "Non pariel," for 2482 acres, granted to James Wignell, dated the 29th day of September, 1786, located upon the plats in this cause, marked "Exhibit Brown No. 58."

Also,

Certificates of award for the following numbered military lots, to-wit:

Military Lots No. 316, 317, 318, 1237, 1238, 1239, 1240, 1447, 1448, 1449, 1450, 1451, 1462, 1463, and 2952, located upon the plats in this cause and marked "Exhibits Brown Nos. 59 to 73" both inclusive.

2000 Also,

Certified copy of a patent from the State of Virginia to William Deakins, dated the 21st day of August, 1787, for a tract of land on the Nettle Ridge, containing 138 acres, located upon the plats in this case, marked "Exhibit Brown No. 74."

Also,

Certified copy of a patent from the State of Virginia to William Ashby for the tract of land designated upon the plats in this cause as "William Ashby 300-acres," granted the 2nd day of February 1787, marked "Exhibit Brown No. 75."

Also,

Certified copy of a patent from the State of Virginia to John Hooker for 2551 acres, dated the 17th day of April, 1788, located upon the plats in this cause and marked "Exhibit Brown No. 76."

Also,

Certified copy of a patent from the State of Virginia to Francis

and William Deakins for 6000 acres, dated the 22nd day of September 1789, located upon the plats in this cause, and marked "Exhibit Brown No. 77."

Also,

Certified copy of the report of Lieutenant N. Michler, dated December 21st, 1859, and map accompanying the same upon the location of the boundary lines between the States of Maryland and Virginia made under the direction of Thomas J. Lee and Angus W. McDonald, Commissioners for the States of Maryland and Virginia, respectively, marked "Exhibit Brown No. 78."

Also,

Resolutions of the General Assembly of Maryland, passed
2001 at the November Session, 1787, providing for a survey of the military lots, marked "Exhibit Brown No 79."

Also,

The Act of the General Assembly of Maryland, passed at the November Session, 1788, chapter 44, marked "Exhibit Brown No. 80."

Also,

Certified copy of a patent for the tract of land called "West Point", granted by the State of Maryland to Gen. John Swan, on the 24th day of June, 1793, for 461 acres, located upon the plats in this cause and marked "Exhibit Brown No. 81."

Also,

Certified copy of a patent for the tract of land called "Siege of Acre Re-Surveyed", granted by the State of Maryland to Richard McCulloh and William C. Pennington, dated the 22nd day of April, 1887, for 828¾ acres of land located upon the plats in this cause and marked "Exhibit Brown No. 82."

Also,

Certified copy of a deed from Richard M. McCulloh and wife to William C. Pennington, dated the 14th day of June, 1890, conveying all of the right, title and interest of said McCulloh in and to said tract called "Siege of Acre Re-Surveyed", marked "Exhibit Brown No. 83."

Also,

Certified copy of a deed from William C. Pennington and wife to the J. L. Rumbarger Lumber Company, a corporation, dated the 25th day of April, 1893, conveying the said tract called "Siege of Acre Re-Surveyed", marked "Exhibit Brown No. 84."

Also,

2002 Certified copy of a deed from The J. L. Rumbarger Lumber Company to The Davis Coal & Coke Company, a corporation, dated the 15th day of March, 1898, conveying *inter alia* the said tract called "Siege of Acre Re-Surveyed", marked "Exhibit Brown No. 85."

Also,

Certified copy of a patent from the State of Maryland to Richard S. McCulloh and Daniel E. Offutt for the tract of land called "Troas Re-Surveyed" containing 933¼ acres, dated the 22nd day of January, 1896, located upon the plats in this cause and marked "Exhibit Brown No. 86."

Also,

Certified copy of a deed from Daniel E. Offutt and others, to The Wilson Lumber Company, of Garrett county, dated the 7th day of February, 1896, conveying the aforesaid tract called "Troas Re-Surveyed", and marked "Exhibit Brown No. 87."

Also,

Certified copy of a deed from The Wilson Lumber Company, of Garrett county, to Eliza Wilson, dated the 31st day of December, 1898, conveying the aforesaid tract called "Troas Re-Surveyed", marked "Exhibit Brown No. 88."

Also,

Certified copy of a deed from Eliza Wilson to Oscar Roth, dated the 29th day of December, 1899, conveying 157¼ acres, more or less, of the said tract called "Troas Re-Surveyed", marked "Exhibit Brown No. 89."

Also,

Certified copy of a deed from Eliza Wilson to Daniel W. Wilson, dated the 27th day of May, 1905, conveying the remainder of the tract called "Troas Re-Surveyed" and marked "Exhibit
2003 Brown No. 90."

Also,

Certified copy of a patent from the State of Maryland to Notley B. Browning, for the tract of land called "White Rock", containing 1180 acres, 2 roods, 30 perches, dated the 23rd day of December, 1881, located upon the plats in this cause and marked "Exhibit Brown No. 91."

Also,

Map of surveys made in this cause on behalf of the State of Maryland by W. McCulloh Brown, Surveyor, marked "Exhibit Brown No. 92."

Also,

Report of W. McCulloh Brown, Surveyor in this cause on behalf of the State of Maryland, of the work done by him and explanatory of the locations made upon the ground and laid down upon his map filed in this cause, marked "Exhibit Brown No. 93."

Counsel for the State of Maryland here formally offers in evidence the pleading and papers now on file in this cause in the office of the clerk of the Supreme Court of the United States.

JULIUS K. MONROE, a witness on behalf of the State of West Virginia, having been first duly sworn, deposes and says as follows:

2004 *Deposition of Julius K. Monroe.*

Examination by Mr. PRICE:

Q. 1. You are the same Julius K. Monroe whose testimony has heretofore been taken in this cause and who acted as the surveyor on behalf of the State of West Virginia, are you?

A. Yes sir.

Q. 2. The plaintiff has introduced a witness, Austin Brown, who

testified in substance that in the year 1886 he went as a constable to arrest a man by the name of Marshall Reckard and that said Reckard assaulted him with an ax and was afterwards tried in the circuit court of Garrett county, Maryland, for said assault; and the plaintiff has also offered evidence to show the location of the house in which said assault was committed, and it is designated upon the map of W. McCulloh Brown, filed in this cause by the black circle and the black letters W. R." Have you located that same point upon your map No. 1, in this cause, from the testimony given, and compared it with Mr. Brown's map?

A. I have.

Q. 3. How have you designated it on your map No. 1?

A. It is designated on Map No. 1, by a small black circle and the black letters "W. R."

Q. 4. Within what tract or parcel of land laid down on your map dies this point fall?

A. This point falls in the Northern portion of the J. A. Reckard 140 acre tract.

Q. 5. Is that the tract of land upon which John A. Reckard resided at the time the deposition of his wife, Amanda J. Reckard, was taken in this cause in 1894?

2005 A. It is.

Q. 6. A part of what original survey is that parcel of 140 acres?

A. It is part of the original Henry Banks survey of 8000 acres.

Q. 7. Granted by what State?

A. Granted by the State of Virginia to Banks in 1803.

Q. 8. The plaintiff has also introduced a certified copy of a patent granted by the State of Maryland to Notley B. Browning, dated December 23rd, 1881, for a tract of land called "White Rock." Where would that tract of land be located if placed upon your map No. 1?

A. It would cover that territory lying between the "Elder Spring" tract of 441 acres and the Henry Deal tract of 328 acres, on the North, and the tract marked "Diadem" on the South, and between the Michler line and the Eastern limit of the Banks survey, and would cover the territory on which this house stood.

Q. 9. What, if any, patent or grant issued by the State of Maryland covered that territory prior to 1881?

Question excepted to by counsel for the State of Maryland because the defendant has not located upon the plat or upon the ground any grant made by the State of Maryland at this point.

A. I know of no grant by the State of Maryland covering that territory prior to 1881.

Q. 10. So far as you know, then, the only grants covering that territory now included within "White Rock", prior to 1881, were grants issued by the State of Virginia?

A. Yes sir.

Q. 11. There has been introduced by Amanda J. Reckard, a witness who testified in this cause on behalf of the State of West

2006 Virginia, a deed dated the 17th of December, 1880, from Jonas Deberry and wife to John A. Reckard, a certified copy

of which is filed with her deposition marked "Exhibit No. 9." Have you located the land conveyed by that deed upon your map No. 1?

A. I have.

Q. 12. How is it designated?

A. It is designated by the words "John A. Reckard" enclosed in black lines and figures "140."

Q. 13. This house, then, at which this assault occurred, is included within the land conveyed to John A. Reckard by Jonas Deberry and wife by this deed of December 17th, 1880. Is that correct?

A. As I understand it, it is.

Certificate.

STATE OF MARYLAND,
Garrett County, To wit:

I, B. Frank Selby, a notary public of the State of Maryland, in and for Garrett County, aforesaid, do hereby certify that the above named witnesses, D. Webster Wilson, Samuel Falkner, W. McCulloh Brown and Austin Brown, were first duly sworn, and their depositions were taken before me on the 25th and 26th days of July, 1907, at the law office of Edward H. Sincell, in the town of Oakland, Garrett County, Maryland, in accordance with the stipulation of counsel hereto annexed.

In testimony whereof I have hereunto signed my name and affixed my notarial seal this 14 day of September 1907.

(Signed) BENJAMIN F. SELBY,
Notary Public. [SEAL.]

2007 *Taxation of Costs.*

Witnesses fees, paid by E. H. Sincell:

D. Webster Wilson, three days and 15 miles	$4.00
Samuel Falkner, three days and 25 miles	4.62
W. McCulloh Brown, — day and — miles	——
Austin Brown, four days and 33 miles	6.00

Stenographer's fees:

To two days' services taking testimony @ $10.00 per day	$20.00	
Traveling and hotel expenses	5.20	
To transcript of testimony	47.00	
	——	72.20

Notary's fees:

To swearing witnesses and certifying depositions ——

The above fees paid by E. H. Sincell, counsel for Plaintiff.

2008 In the Supreme Court of the United States. In Equity.

THE STATE OF MARYLAND
vs.
THE STATE OF WEST VIRGINIA.

The following stipulation is made in this cause this 10th day of September, 1894:

The surveyors selected to do the surveying under the last order made in this cause are Julius Monroe of the County of Preston, West Virginia, and John Harned of the County of Garrett, Maryland.

The said surveyors shall meet at Kingwood, Preston County, West Virginia, on Tuesday the 2nd day of October, 1894, and proceed thence to such point as the Attorneys for the State of West Virginia may then designate and enter upon and do such surveying, provided for by the order aforesaid, as the attorneys for the State of West Virginia may direct to be done; and said surveyors, after the completion of such surveying as the said attorneys shall direct, or during the progress thereof if deemed best, shall do such surveying, provided for in the order aforesaid, as the Attorney for the State of Maryland may direct to be done.

In doing the surveying directed by the Attorney for the State of West Virginia the said Julius Monroe shall be the Chief of the Engineering Corps, with the right to the said John Harned to do or require to be done all surveying necessary to verify, or show errors in, the work done by the said Monroe; and in doing the surveying directed by the Attorney for the State of Maryland the said John Harned, shall be the Chief of the Engineering Corps, with the right to the said Monroe to do or require to be done all surveying necessary to verify, or show errors in, the work done by the said John Harned.

2009 Whenever one of said surveyors is acting as the Chief of the Corps, the other surveyor shall render him all reasonable assistance demanded.

The failure or refusal of one of said surveyors to attend or participate in the work while the other is acting as Chief of the Corps as aforesaid, shall not interrupt or suspend the work, but the same shall proceed as if he were present, such absences however being noted in the report, or reports, in such manner as to show what parts of the surveying is done in the absence of one of the surveyors.

Upon the completion of the surveying the said surveyors shall make a report thereof, or separate reports in case of disagreement, and map or maps of the work done, and also make the number of copies of each report and of each map the order aforesaid provides for, or the Attorneys in the cause may direct, and return and file the same with all exhibits used with the Clerk of the Supreme

Court, together with a statement of all the costs and expenses of the survey and the portions thereof paid by each party.

JOHN PRENTISS POE,
Attorney General of Maryland, for the State of Maryland.
FLOURNOY & PRICE,
Attorneys for the State of Maryland.

Endorsed: Supreme Court, U. S. No. 1, Original. Oct. Term, 1907. Maryland *v.* West Virginia. Filed Oct. 15, 1907.

2010 And on the same day, to wit, on the 15th day of October, A. D. 1907, the evidence for the defendant was opened and filed, which said evidence is in the words and figures, following, viz:

2011 The Supreme Court of the United States.

STATE OF MARYLAND
vs.
STATE OF WEST VIRGINIA.

The state of West Virginia offers in evidence in her behalf in the above entitled cause the following document and papers, and historical matter:

I. The first charter of the colony of Virginia, dated April 10th, 1606, as the same is published in the work, and entitled, Charters and Constitutions of the United States. Part second, page 1888.

II. The second charter of Virginia, dated May 2nd, 1609, as the same is published in the said work, Charters and Constitutions of the United States.—Part 2nd, page 1893.

III. Smith's History of Virginia, volume I, book III, Chapter I, page 149.

IV. Smith's History of Virginia, volume I, book III, chapters V and VI and the map published therewith.

V. Stith's History of Virginia, appendix No. 2, page 8, etc.

VI. Report number 457, 28th Congress, first session, House of Representatives, entitled (Issue of script.) To accompany the bill of the House of Representatives, No. 353, made by Hon. H. E. Hubard, from Committee on Public lands; also letter of Mr. Hubard to Hon. H. A. Wise, dated September 6th 1872, and copy of which is found on pages 1 and 4 of the appendix to the report of the Virginia Commissioners on Maryland and Virginia boundary line of 1873.

VII. The report and accompanying documents of the Vir-
2012 ginia Commissioners on the Maryland and Virginia boundary line of 1873, Exhibit A filed with the answer of the defendant in this cause.

VIII. The third Charter granted by King James the First, to the London Company, March 12th, 1612, as found in the publication of Charter and Constitutions, Part Second, page 1902.

IX. Henning's Statutes at Large, pages 230-236.

X. The Charter of Maryland granted to Cecilius Calvert, baron of Baltimore, 1632, as the same is published in Charters and Constitutions of the United States, Part 1, page 810.

XI. Copy of the said Charter of Maryland as found in House Documents of Maryland, 1874, Pages 219 and 220.

XII. Opinion of Chief Justice Marshall in the case of Johnson and Graham, lessees, *vs.* Wm. McIntosh, 8 Wheaton, page —.

XIII. De Jarnett papers No. 80, Colonial, Virginia, volume 59, No. 19 dated August 3, 1663, and found at page 155 of the report of the Virginia Commissioners on the boundary line on Maryland and Virginia of 1873, filed as exhibit A, with the answer in this cause, being letters patent to Lord Germine and others, dated August 3, 1663, for the Northern Neck of Virginia.

XIV. Confirmatory letters patent, dated May 3, 1667, to Lord Hopton and others, for the Northern Neck of Virginia.

XV. 1st Revised Code of Virginia, 1819, Chapter 89.

XVI. The settlement of the title of Lord Fairfax and his devisees to the Northern Neck of Virginia, as found in the case of Fairfax's devisees *vs.* Hunter's lessees 7 Cranch 604.

XVII. Also settlement of the same title in the case of Marshall *vs.* Conrad, 5 Call (Virginia) 404.

XVIII. 1st Revised Code of Virginia, 1819, Chapter 92.

XIX. 1st. Revised Code of Virginia, Chapter 91.

2013 XX. Chapter 47 of the Acts of the General Assembly of Virginia of 1785. Said Chapter being erroneously numbered 67.

XXI. Bury's Manuscript proceedings of the Commissioners to lay out the bounds of the Northern Neck.

XXII. Copy of map made of the Northern Neck, of Virginia by the Commissioners who surveyed the same, which is filed with the answer in this cause, marked "survey of Northern Neck 1736-7" Defendant's exhibit B.

XXIII. Narrative and Critical History of America, edited by Justin Windsor, librarian of Harvard University, volume 5, pages 272, 273, 276, etc., as far as the same relates to the ascertainment of the boundaries of Lord Fairfax grant of the Northern Neck.

XXIV. Survey and copy of the surveyor's note-book kept by Thomas Lewis, one of the surveyors of the Commissioners who ran the line between the head springs of the Rappahannock and Potomac rivers in 1746, and planted the Fairfax Stone at the head of the North branch of the Potomac river. This copy is introduced in lieu of the original note-book by agreement of Counsel, for both sides.

XXV. Chapter 55 of the Acts of the General Assembly of Virginia of 1748, found in 6 Henning's Statutes at Large, page 198 stating the settlement of the controversy between the colony and Lord Fairfax about the Northern Neck.

XXVI. Acts of the General Assembly of Virginia, passed October —, 1785, providing for the safe keeping of the land papers of the Northern Neck, in the Register of the Land Office of Richmond.

XXVII. Acts of the General Assembly of Virginia passed the — day of — 1738, creating the counties of Augusta and Frederick.

XXVIII. Spark's Life of Washington, pages 12 and 13.

XXIX. Copy of map published with John Smith's His-
2014 tory of Virginia in 1629, filed with the answer in this cause and marked defendant exhibit C.

XXX. Copy of map made by Augustine Herman in 1670 for Lord Baltimore, filed with the answer in this cause, marked defendant exhibit D.

XXXI. Copy of map of Frye and Jefferson, published in 1755, filed with the answer in this cause, marked defendant exhibit F. and G.

XXXII. Report of the late Chas. J. Falkner to Gov. Floyd of Virginia, made in 1832, found in Kercheval's History of the Valley, page —, also in Lewis' History of West Virginia, Chapter 17.

XXXIII. Copies of the letters between Gov. Sharpe of Maryland, and Lord Baltimore 1753 and 1757 as published in the "Archives" Maryland, in the volume entitled "Correspondence of Gov. Sharpe—1753-1757," namely, letter from Sharpe to Cecilius Calvert, secretary of Lord Baltimore, dated August 2nd, 1753.

Letter from Sharpe to Calvert, dated September 14th, 1753, page 5.

Letter from Sharpe to Lord Fairfax, as stated in his letter to Calvert, September 14th 1755; later, Fairfax's reply to said letter, dated September 24th, 1753, page 7.

Sharpe to Calvert, November 29th 1753, page 14.

Lord Baltimore to Governor Sharpe, January 5th 1754, pages, 18 & 19.

Sharpe to Calvert, April 17th 1754, page 44 and following; especially, see page 49.

Sharpe to Calvert, January 6th 1754, page- 70 & 72.

Calvert to Sharpe, December 10th 1754, page 130.

XXXIV. Act of the General Assembly of Virginia, creating the county of Hampshire, passed on the — day of ——, 1753,
2015 found in 6th Henning's Statutes at Large, page 376.

XXXV. Act of the General Assembly of Virginia, of 1785, creating the county of Hardy, 12th Henning Statutes at large, page 86.

XXXVI. Act of the General Assembly, of Virginia, passed, 178– enlarging county of Hampshire, 12th Henning Statutes at Large, page 597.

XXXVII. Acts of the Legislature of West Virginia of 1860, chapter 29, creating the county of Grant out of the western part of Hardy.

XXXVIII. Acts of the Legislature of Virginia, passed on the — day of —— 1787, creating the county of Pendleton.

XXXIX. Act of the General Assembly of Virginia, passed on the — day of —— 1776, creating the county of Monongalia,—Henning Statutes at large, page —.

XL. Acts of the legislature of Virginia, passed on the — day of

—— 1784, creating the county of Harrison,—Henning statutes at large, page —.

XLI. Act of the General Assembly of Virginia, passed on the — day of —— 1818, creating the county of Preston,—Henning statutes at large, page —.

XLII. Acts of the legislature of Virginia, passed on the — day of —— 1856, creating the county of Tucker,—Henning Statutes at large, page —.

XLIII. Acts of the legislature of West Virginia, being chapter 85 of the Acts of 1866, and chapter 50 of the Acts of 1881, granting the chapter to the West Virginia Central & Pittsburg Railway Company.

XLIV. Act of the General Assembly of Maryland, passed February 28th 1827, granting a charter to the B. & O. Railway Company.

XLV. Acts of the legislature of Virginia, passed March 8th
2016 1827, and March — 1847, page 86, granting charter to the B. & O. Railroad Company, and authorizing it to complete its road through the territory of Virginia, over the route thereby prescribed.

XLVI. First constitution of Virginia, sec. 21, adopted June 29th 1776, as found in 1st revised code of Virginia, page 33.

XLVII. Compact between Virginia and Maryland, as to the jurisdiction over the Potomac river dated March 28th 1785, ratified by the General Assembly of Virginia, by Act of January 3rd, 1786, found in 1st revised code of Virginia, page 53, chapter 18.

XLVIII. Act of the General Assembly of Maryland, of 1781, chapter 20, appropriating the lands west of Fort Cumberland, as bounty lands for her Revolutionary soldiers.

XLIX. Resolutions of the General Assembly of Maryland, April session, 1787, authorizing the governor and council to appoint some skillful person to lay out said lands into lots of fifty acres.

L. Certified copy of the map of Francis Deakins of the military lots laid out by him under the above resolutions, west of Fort Cumberland, filed with the answers in this cause, as defendant's exhibit, H.

LI. Copies of the course and distance of all lots on said map which adjoined the line drawn from the Fairfax stone to the Pennsylvania line, which is filed with the answer in this cause, marked, Defendant Exhibit I.

LII. Act of the General Assembly of Maryland of 1818, chapter 206, for the appointment of commissioners to settle the western boundary of the state.

LIII. Act of the General Assembly of Virginia, passed February 28th 1822, chapter 14, for the appointment of commissioners to settle the western limits of the state, to commence at the Fairfax stone.

LIV. Act of the General Assembly of Maryland passed
2017 the — day of —— 1825, providing for the appointment of Commissioners.

LV. Report of Maryland commissioners appointed by said Act of 1825, which was transmitted to the governor of Virginia in June,

1832, found in Journal and Documents of the House of Delegates of Virginia of 1832-1833.

LVI. Act of the Legislature of Virginia of March 20th 1832, page 308, directing the governor to procure a copy of the decision of the king, of the controversy between Lord Fairfax and the colony in regard to the Northern Neck of Virginia.

LVII. Report of Chas. J. Falkner under the above resolution and published in Kercheval's History of the Valley of Virginia, Chapter 13, and Lewis' History of West Virginia, Chapter 17.

LVIII. Act of the General Assembly of Virginia, passed on the — day of —— 1833, page 24.

LIX. Resolution of the General Assembly of Maryland adopted March 14, 1834 Acts 1833-1834, resolutions No. 80 directing the Attorney General to institute suit in the name of the state of Maryland against the Commonwealth of Virginia for the settlement of the southern and western boundaries.

LX. Resolutions of the legislature of Maryland, adopted March 21st, 1835, Acts of 1835. Resolution 99, directing the Attorney General to discontinue said suit.

LXI. Acts of the legislature of Maryland, passed March 27th 1852, Chapter 275, authorizing the appointment of a commission to act with the commission to be appointed by Virginia to cause the line from the Fairfax stone to the Pennsylvania line to be accurately surveyed, traced and marked with suitable monuments, beginning therefor at the Fairfax stone etc.

2018 LXII. Acts of the General Assembly of Virginia, passed March 3rd 1854, Acts 1854, chapter 1, providing for the appointment of a commission to act with the Maryland commission in running the boundary line beginning therefor at the Fairfax stone on the Potomac river etc.

LXII*a*. Joint report of commissioners, McDonald and Lee, together with the message of Governor Wise and Governor Letcher, also report of Lieutenant Michler, contained in pamphlet, filed with defendant's answer in this cause, marked, Defendant's Exhibit J.

LXIII. The work prepared by commissioner Lee, which is filed with defendant's answer marked Defendant's Exhibit K.

LXIV. Acts of the legislature of Maryland, passed March the 5th 1860, Acts 1860, chapter 385, adopting the Michler line, as the western boundary of the state.

LXV. Copy of the map, made by Lieutenant Michler, of said line, which is filed with the answer in this cause, marked, Defendant's Exhibit O.

LXVI. Message of Governor Hicks of Maryland to the Legislature, January session, 1862, as found in the Senate Journal and documents of Maryland 1861-2.

LXVII. Maryland constitution of 1856, section 8, as found in Charters and Constitutions, part I. page 857.

LXVIII. Acts of the legislatur- of Maryland of April 1st, 1872, creating Garrett county.

LXIX. Acts of the legislature of Maryland of 1886, being chap-

ter — of the Acts of 1866, incorporating the Piedmont & Cumberland Railway Company.

LXX. Chapter 59 of the Acts of the legislatur- of Maryland 1888, amending the charter of the Piedmont & Cumberland Railway Company.

2019 LXXI. Chapter 94 of the Acts of the Legislature of Maryland of 1865, providing for the publishing of Martenets' map of Maryland.

LXXII. Copy of Martenet's map of Maryland, filed with the answer in this cause, marked Defendant's Exhibit L.

LXXIII. Map accompanying Thomas Hutchin's topographical discription of Virginia, Pennsylvania, Maryland and North Carolina, reprinted in 1904 from the original edition of 1778, filed in the library of Virginia.

LXXIV. Final report of Virginia commissioners on the Maryland and Virginia boundary, to the Governor of Virginia 1874, which is filed with the Defendant's answer in this said cause, marked Defendant's Exhibit M.

LXXV. The journal and report of the proceedings of the joint com-issioners to adjust the boundary lines of the states of Maryland and Virginia, as published by the state of Maryland in 1874.

LXXVI. Copy of the map made by Eman Bowen, geographer to his Majesty made under the treaty of Paris, February the 10th 1763, between Great Britain and France, which is filed with the answer in this cause of Defendant, Exhibit P.

LXXVII. Copy of the map made by John Mitchell in 1755, which is filed with the Defendant's answer, marked large, Volume 1.

LXXIX. Report of the Virginia commissioners, 1873, page 115, being Exhibit A, filed with the Defendant's answer.

LXXX. Narrative and Critical History of America, by Justin Windsor, Librarian of Harvard University, volume 3, pages 131, 148, 153, to 168; 517, 536, to 542, and 554.

2020 LXXXI. Topographical map made by the United States Geological Survey of the territory in dispute in this cause.

LXXXII. State of West Virginia, also offers in evidence the depositions of several witnesses taken by her in this cause, together with all the exhibits mentioned in, and filed with said depositions.

LXXXIII. The report of Julius K. Monroe, surveyor of the surveying done by him in this cause, and the maps prepared by him and exhibited by his testimony entitled "State of Maryland *vs.* State of West Virginia in the Supreme Court of the United States, map No. 1, map No. 2, and map No. 3." Map No. 4 and map No. 5.

THE STATE OF WEST VIRGINIA,
By GEO. E. PRICE, *Assistant Counsel.*

Endorsed: State of Maryland *vs.* State of West Virginia Evidence offered by Defendant No. 1. Supreme Court U. S. No. 1 Original, Oct. Term 1907. Maryland *vs.* West Virginia Filed Oct. 15, 1907. Office Supreme Court U. S. Filed Oct. 15 1907. James H. McKenney Clerk.

2021 In the Supreme Court of the United States.

STATE OF MARYLAND
vs.
STATE OF WEST VIRGINIA.

The State of West Virginia offers as evidence in her behalf in the above entitled cause the following additional documents and papers:

1. Copy of the Articles for the Surrendering of Virginia to the Parliament of the Commonwealth of England. 1 Hening's Statutes at Large, pages 363, 364 and 365.

2. Act of Congress for the Admission of the State of West Virginia into the Union; approved December 31, 1862. Charters & Constitutions, pages 1992 and 1993.

3. Joint Resolution of Congress to the transfer of the Counties of Berkeley and Jefferson to the State of West Virginia; approved March 10, 1866. Charters & Constitutions, Part 2, page 1993.

4. Act of the Legislature of West Virginia, establishing the County of Mineral out of a part of the County of Hampshire; chapter 7, Acts of 1866, passed February 1, 1866.

5. Act of the Legislature of West Virginia 1867, chapter 86, passed February 29, 1868. An act to alter part of the division line between the counties of Hampshire and Mineral.

6. Acts of the Legislature of West Virginia 1881, chapter 50. An act to change the name of the Potomac & Piedmont Coal & Railroad Company &c.; passed February 23, 1881.

7. Laws of Maryland 1886, chapter 295, page 499. An act to provide for the further publication of the Archives of Maryland. Approved April 7, 1886.

2022 8. Requisition of the Governor of Maryland on the Governor of West Virginia for William Craig, September 23, 1872.

9. Requisition of the Governor of West Virginia on the Governor of Maryland for Augustus Summers, August 19, 1875.

10. Requisition of the Governor of West Virginia on the Governor of Maryland for William Bartholomew, September 3, 1877.

11. Requisition of the Governor of West Virginia on the Governor of Maryland for M. F. Inskeep, July 3, 1880.

12. Requisition of the Governor of West Virginia on the Governor of Maryland for William Harris, December 23, 1881.

13. Patent issued by the State of Maryland to George Templeman and James W. McCulloh for the tract called "Seige of Acre," containing 1831¼ acres, dated December 4, 1839.

14. Patent from the State of Maryland to James W. McCulloh and George Templeman for tract of land called "Troas," containing 3131¾ acres, dated December 20, 1839.

15. Certified copy of deed from Sarah Friend and others to John H. Friend, dated February 9, 1884. Recorded in Preston County Clerk's Office in deed book 57, page 123.

16. Certified copy of deed from John H. Friend and wife to Melville G. Friend, dated February 10, 1893. Recorded in Clerk's Office

of the Circuit Court of Garrett County, Maryland, Liber E. Z. T. No. 20, Folio 443.

17. Certified copy of deed from Mary C. Loar to Preston Lumber & Coal Company, dated November 27, 1903. Recorded in county Court Clerk's Office of Preston County, West Virginia, in deed book 106, page 24.

18. Certified copy of deed from Mary E. Kunkle and others to Albert Lewis and others, dated July 30, 1891. Recorded in
2023 County Court Clerk's Office of Preston County, West Virginia, deed book 71, page 31.

19. Certified copy of patent from Commonwealth of Virginia to Dan Griffith for 31 acres in Preston County, dated August 31, 1836.

20. 1 Hennings Statutes pp. 358 to 361.

21. 1 Hennings Statutes pp. 363-4-5.

Articles at the surrender of the Countrie.

22. 1 Hennings Statutes p 365.

Articles for surrendering Virginia.

23. 1 Hennings Statutes pp. 230 to 236.

Declaration against the Company.

THE STATE OF WEST VIRGINIA,
By GEO. E. PRICE,
Assistant Counsel.

Endorsed: State of Maryland *vs.* State of West Virginia Evidence offered by Defendant No. 2. Supreme Court U. S. No. 1 Original, Oct. Term 1907. Maryland *v.* West Virginia Filed Oct. 15, 1907. Office Supreme Court U. S. Filed Oct. 15, 1907. James H. McKenney, Clerk.

2024 Byrd Manuscripts, Westover, Va., 1728, Vol. 11.

The Proceedings of the Commissioners Appointed to Lay Out the Bounds of the Northern Neck, Lying Between the Rivers Potomack and Rappahannock.. Anno 1736.

THE Letters Patent by which the Northern Neck was granted to the Lord Colpepper and others, not having exprest the Western Bounds thereof very clearly, several Controversys arose between his Majesty's Governors of Virginia, and the Agents of the Lord proprietor about them. Many Patents were issued in the Kings Name for Lands, which his Lordship apprehended to be within his Grant, and his Agents on their Part likewise granted other Lands which the King's Governors did conceive belong'd to his Majesty. These Disputes increasing every day, the Lord Fairfax being informed thereof, was very desirous to have the Bounds of his Patent settled, and therefore in the year 1733, His Lordship presented a Petition to his Majesty, praying that his Majesty would be pleased to order a Commission to issue, for ascertaining his Bounds, &c, which Petition will appear more particularly by the following Order of his Majesty in Council. At the Court at St. Jame's the 29th of November 1733. Present. The King's most Excellent Majesty in Council.

Whereas Thomas Lord Fairfax hath by Petition at this Board, humbly represented, that under Letters Patents granted bearing date, the —th day of May in the one and twentieth of his Reign, and also by King James the Second, bearing date the 27th of September in the 4th year of his Reign, the Petitioner is intituled
2025 to the Fee Simple and Inheritance, of all that intire Tract, Territory, or Parcel of Land, situate in Virginia in America, and bounded by and within the first Heads or Springs of the Rivers Tappahanock, alias Rappahanock, & Quireough, alias Potomack & by the Courses of the said Rivers from their said first Heads or Springs (as they are commonly called or known by the Inhabitants & Discriptions of those parts) and the Bay of Chesapeyock, together with the said Rivers themselves, and all the Islands within the outermost Banks thereof and the Soil of all and Singular the Premises, and all Lands, Woods, Underwoods, Timber, Waters, Rivers, Havens, Ports, Harbours, Creeks, Ferrys, Advowsons, Royalties, Hereditaments, and so forth whatsoever, that notwithstanding the Petitioner's Right to the Tract of Land under the said Grants, Several Disputes have arisen between His Majesty's Governor and Council of the Province of Virginia, & the Petitioners Agents touching the Boundarys thereof, and the said Governor and Council have from time to time Actually taken upon them to issue Grants of divers parcels of Land, part of the Petitioners said Tract, and have run out Surveys of other Parcels of Land, altho' the same, as the Petitioner apprehends, and is advis'd, were clearly within the Bounds of his said Tract, For remedy whereof for the Future, and in order to settle the Boundaries of the Petitioners said Tract of District, between his Majesty's Province of Virginia, and the Petitioner, he most humbly pray'd, that his Majesty would be graciously pleased, to order a Commission to issue, for running out, marking and ascertaining the Bounds of the Petitioners said Tract, or District of Land, agreeable to the Discription thereof, as express'd, & contain'd in the
2026 said several Grants from the Crown, & that His Majesty would be pleas'd to name, or caused to be named, such a Number of Commissioners for that purpose for the said Province of Virginia as his Majesty should think proper, to be joined with an equal number of Commissioners on the Petitioners behalf, and that the said Boundary Lines of the said Province of Virginia so far as the same Affect or concern the Petitioners said Tract of Land, and also the Boundary Lines of the Petitioners said Tract or District of Land, may be survey'd, run our and mark'd within a reasonable time to be limited for that purpose, and in case the said Boundary Lines shall not be run, settled and ascertained within the time to be so limitted as aforesaid, that then His Majesty would be pleas'd to hear the Petitioner by his Counsel on the Premises, and to give such order and make such Determination concerning the same, as to His Majesty in his great Wisdom shoul'd seem meet, and that his Majestys Governor of the Province of Virginia, might be directed and *and* prohibited from making Grants of any Lands lying within the Boundarys insisted by the Petitioner or his said Agent or Attorney to belong to the Petitioner under the said Grant from the

Crown, untill the said Boundary Lines shall be settled and ascertained as aforesaid. His Majesty in Council was this day pleas'd to take the said Petition into His Royal Consideration, together with the Opinion of a Committee of his privy Council, and of the Lords Commissioners for Trade and Plantations thereupon, And is hereby pleased to Order, that the Lieutenant Governor of the Province of Virginia shall nominate three, or more Commissioners (not exceeding Five) who in conjunction with a like Number to be
2027 named and Deputed by the Lord Fairfax; are to survey & settle the marks and Boundaries of the said District of Land agreeable to the Terms of the Patents under which the Lord Fairfax claims, within the Space of two years after the arrival of this order. And his Majesty is further pleas'd to order, that in the mean time the said Lieutenant Governor of Virginia do not presume to make any Grants of Lands within the abovemention'd Tract.

JAMES VERNON.

In Obedience to the above order of his Majesty in Council (which the Lord Fairfax brought over to Virginia himself, but did not think fit to produce it to the Governor til more than 2 years after the Date thereof) his Honor William Gooch Esq. was pleas'd to issue the following Commission to William Byrd, John Robinson and John Grymes Esqrs.

William Gooch, Esqr., His Majesty's Lieut. Governor and Commander in Chief of the Colony and Dominion of Virginia, to whom these presents shall come, Greeting:

Whereas the Right Honorable Thomas Lord Fairfax by his Petitions to his Majesty in his Privy Council, hath humbly represented, that under Letters Patents granted to his Ancestors by King Charles the Second on the Eighth day of May in the 21st Year of his Reign, and by King James the Second, bearing date the Twenty Seventh Day of September in the fourth Year of his Reign, he the said Thomas Lord Fairfax is entituled to the Fee-Simple and Inheritance of all that intire Tract, Territory, or Parcel of Land, situate in Virginia in America, and bounded by and within the first Heads,
2028 or Springs of the Rivers Tappahanock, alias Rappahanock, and Quireouch, alias Potamack, the courses of the said Rivers from their said first Heads or Springs (as they are commonly called or known by the Inhabitants and description of those parts) and the Bay of Chesapeak, together with the Rivers themselves, and all the Islands within the outermost Banks thereof. And further represented to his Majesty, that several Disputes have arisen, touching the Boundarys of the said Territory, and thereupon did humbly Supplicate his Majesty that for settling the Boundaries of the Petitioners said Tract, his Majesty would be pleas'd to order a Commission to issue, and for running, marking and ascertaining the Boundings of the Petitioners said Tract or District of Land, agreeable to the Description thereof, as expressed and contain'd in the said Grants thereof from the Crown, as in and by the said Petition (amongst other things) is more at large contain'd, And whereas his Majesty upon Consideration of the said Petition, hath been graciously pleas'd

by order in his privy Council, bearing Date the 29th day of November 1733, to direct me to nominate three or more Commissioners (not exceeding five) who in Conjunction with the like Number to be named and deputed by the said Lord Fairfax are to Survey and settle the Marks and Boundaries of the said District of Land, agreeable to the Terms of the Patents under which the Lord Fairfax claims, within the time therein limited. Know ye therefor that in Obedience to his Majesty's Royal Commands, and for the more Speedy and Exact performance of the Service aforesaid, and for removing all future Disputes and Controversies, touching the Boundaries between his Majesty and the said Lord Fairfax, I reposing Special Trust and Confidence in the Loyalty, fidelity and known Ability of William Byrd of Westover in the County of Charles City esqr, John Robinson of Piscattoway in the County of Essex Esq, and John Grymes of Brandon in the County of Middlesex, Esqr, Members of his Majesty's Council in this Dominion, have Nominated, deputed, and by these Presents do Nominate, Depute and appoint the said William Byrd, John Robinson & John Grymes, Commissioners on behalf of his Majesty for the purposes herein before mentioned giving and granting unto the said Commissioners full Power and Authority, by all Lawfull Ways and Means, to examine, settle, and determine all Matters and things touching and concerning the said Several Boundaries, according to the true intent and meaning, and Genuine Sence and construction of the Several Letters Patents, Granted for the said Tract and Territory, and for the better enabling the said Commissioners to perform the said Service, I do further give and grant unto them full Power and Authority, to call before them all and every Person and Persons, by whom the Truth in the Premises may be more fully known and explain's, and their and every of their Affidavits and Depositions openly and plainly in the Presence of the said Lord Thomas Fairfax, His Agents, Deputy's, or Commissioners to take or Cause to be taken in Writing, and in all Offices as well of Record as other ways, within this Dominion, to enquire, or cause to be Searcht for all Papers, Muniments, and Records, whereby the Boundarys aforesaid may be more clearly and distinctly known and discovered, hereby requiring the Clerks, and other Officers concerned in the keeping the said Offices and Records, to give unto the said Commissioners free Access unto the Same, and to furnish them with Extracts, Transcripts, and Copies thereof, for which the usual Fees shall be duly Satisfied and paid out of his Majesty's Revenues. And I do moreover give and Grant unto the said Commissioners full Power and Authority, such and so many Surveyors, Chain-Carryers, Markers, and Attendants, as they shall find necessary for the Service aforesaid, to take, hire, and employ, hereby requiring the said Commissioners in case any difficulty should happen to arise, so as the said Boundaries cannot be settled, and ascertain'd on the place, in Conjunction with the Commissioners appointed by the said Lord Fairfax, a full true and exact Report of all Matters of Tract, and other their Proceedings, Specially to return to me or the Commander

in Chief of this Colony and Dominion for the time being, in order to be laid before his Majesty for his final Determination.

Given under my hand, and the Seal of the Colony at Williamsburgh the Seventh Day of September 1736. In the Tenth Year of the Reign of our Sovereign Lord George the 2nd by the Grace of God of Great Britain, France, and Ireland King, Defender of the Faith, &c.

When the Lord Fairfax, understood that the Gentlemen above mention'd were named Commissioners on the part of the King, he sent word by Mr. Baradel that he had so good an Opinion of their Justice, that he would abide by their Decision without appointing any Commissioners of his own, upon which Completement the following paper was sent to his Lordship to sign, in Order to confirm what his Council had said.

To all People to whom these Presents shall come, Thomas Lord Fairfax Proprietor of all that Tract or Territory of Land
2031 Commonly call'd the Northern Neck of Virginia, sendeth Greeting:

Whereas by an Order made by his Majesty in his Privy Council bearing date the twenty ninth day of September one Thousand Seven hundred and thirty three, upon the humble Petition of the said Thomas Lord Fairfax His Majesty was pleas'd to direct the Lieutenant Governor of Virginia, to nominate three or more Commissioners (not exceeding five) who in Conjunction with a like Number to be named and deputed by the said Lord Fairfax, are to survey and settle the Marks and Boundaries of the aforesaid Tract or Territory of Land, agreeable to the Terms of the Letters Patents under which the said Lord Fairfax claims, as in the said order more fully is contain'd.

And Whereas in obedience to the said Order, the Honourable William Gooej Esqr. Lieutenant Governor of Virginia, hath nominated and appointed William Byrd, John Robinson, and John Grymes, Esquires, Members of his Majestys Council of Virginia, Commissioners on behalf of his Majesty to execute the Order aforesaid.

Now know ye, that the said Thomas Lord Fairfax, having full confidence in the Honour and Integrity of the said William Byrd, John Robinson, and John Grymes, and therefore thinking it unnecessary to nominate and appoint any Commissioners on his Behalf, hath consented and agreed, and by these Presents doth consent and agree, that the said William Byrd, John Robinson, and John Grymes, shall and may without any Commissioners to be named by him the said Lord Fairfax, proceed to execute the Order of his Majesty herein before mention'd, and the said Thomas
2032 Lord Fairfax doth hereby declare, that it is his intent and meaning, that whatsoever the said William Byrd, John Robinson, and John Grymes shall Act and do in the Execution of the Order aforesaid, shall be as valid and effectual as if the same was done in Conjunction with other Commissioners nominated by him the said Thomas Lord Fairfax.

In witness whereof the said Thomas Lord Fairfax hath hereunto set his hand and seal this tenth day of September, in the Year of our Lord One Thousand Seven Hundred and thirty six.

When this Declaration was sent to the Lord Fairfax to sign, he was pleas'd to refuse it, which shew'd that the Complement made by his Lordship's order to the King's Commissioners, was shear Good Breeding. Upon his Refusal the Governor thought fit to give the following Instructions to his Majesty's Commissioners.

Instructions to William Byrd and John Robinson, and John Grymes, Esqrs., Commissioners appointed in behalf of his Majesty for running marking and ascertaining that tract, Territory, or District of Land, Situate in Virginia in America, and claimed by the Right Honourable Thomas Lord Fairfax, as granted by Sundry Letters Patents to his Ancestors under the great Seal of England.

Whereas I have appointed you Commissioners in behalf of His Majesty, for Surveying and settleing the Boundaries between
2033 His Majesty and the said Lord Fairfax, for your better information in this Service, you will herewith receive Coppies of the several Letters Patents granted by the Crown for the Territory aforemention'd, Vizt The Letters Patent granted by King Charles the Second, bearing date at St. — the 18th day of September in the first Year of his Reign to Ralph Lord Hopton and others, then the Letters Patents granted by the said King Charles the Second bearing date at Westminster the 5th day of May in the one and twentieth Year of his Reign, to Henry Earl of St. Albans and others, and lastly the Letters granted by King James the Second unto Thomas Lord Culpeper, bearing date at Westminster the 27th day of September in the fourth year of his Reign. And you will also herewith receive an order of his Present Majesty in his Privy Council, bearing date the 29th day of November 1733, made upon the humble petition of the said Thomas Lord Fairfax, in pursuance whereof you are now Commissioned and appointed, you will therefore carefully peruse & consider the said several Letters Patents, & the order of his Majesty aforemention'd, and according to the true and genuine Sence and construction thereof, as soon as the Season of the year will permit your entering upon that Service, proceed to survey, mark, and settle the boundaries of the said Tract or Territory of Land, taking notice, that by the aforesaid Order of his Majesty in his Privy Council, the said Service is to be perform'd within the Space of Two Years after the arrival of the said order, and that the time for the same must be reckon'd from the 15th day of October last past, when the said Order was first deliver'd to me.

2034 And forasmuch as it may be necessary for the more clear Description of the Bounds in controversy, to have exact Maps of the Rivers Rappahanock and Potomack and the Branches thereof to the first Heads or Springs so called or known,

You are to cause the Surveyors so by you employ'd to prepare correct Mapps thereof, in order to be laid before his Majesty.

And if it shall so happen, that no Determination or Settlement of the Boundaries can be made upon the Place, and it be found necessary *yo* have recourse to his Majesty for his final Determination, you are in that Case to be very Exact in taking the Affidavits and depositions of such Persons as you shall find proper examine touching the said Rivers Rappahanock and Potomack, and how far they were known by those Names at the time of the last Grant made by King James the Second to the Lord Culpepper, and how far the Bounds of the Territory aforesaid were at that time reputed to extend, or have been since bounded by the Proprietors thereof or their Agents, and report all matters of Fact and Evidence, especially touching the Premises, to me, or the Commander in Chief of this Dominion for the time being, together with your Opinion wherein the Bounds now claim'd by the Lord Fairfax, are consistant or inconsistant with the Terms of the several Grants, as the same were call'd & known by the Inhabitants & descriptions of those parts.

Given under my hand at Williamsburgh this Eighth day of September 1736.

WILLIAM GOOCH.

2035 The Lord Fairfax after deliverating a long time what Measures to take, determin'd at last to appoint 3 Commissioners of his own, to act in Conjunction with those of his Majesty. However he would not trust them to determine his Bounds, but only to settle matters of Fact, to be laid before the King for his final Determination, and this appears by his Lordships Commission as follows.

To all People to whom these Presents shall come, Thomas Lord Fairfax, Baron of Cameron, in that part of Great Britain called Scotland, sendeth greeting:

Whereas the said Thomas Lord Fairfax by his Petition to his Majesto in his Privy Council, did humbly represent, that under Letters Patents granted to his Ancestors by King Charles the Second bearing date the Eight day of May in the Twenty first Year of his Reign, and by King James the Second bearing date the Twenty Seventh day of September in the fourth year of his Reign. He the said Thomas Lord Fairfax is entitled to the Fee Simple and Inheritance of all that intire Tract, Territory, or parcel of Land Situate in Virginia in America, and bounded by & within the first heads or springs of the Rivers Rappahanock & Potoumeck (as they are commonly called and known by the Inhabitants and descriptions of those Parts) & the Bay of Chesapeak, together with the Rivers themselves and all the Islands within the outermost Banks thereof, and further representing to his Majesty that several Disputes have arisen touching the Boundaries of the said Territory, and thereupon did humbly Supplicate His Majesty, that for settling the Bound-
2036 aries of the Petitioners said Tract, His Majesty would be graciously pleas'd to order a Commission to issue for run-

ning, marking, and ascertaining the Bounds of the said Petitioners said Tract or District of Land, agreeable to the Descriptions thereof, as express'd and contain'd in the Grant thereof from the Crown, as in and by the said Petition (among other things) is more at large contain'd, And whereas his Majesty upon Consideration of the said Petition, was graciously pleas'd by order of his Privy Council, to direct that the Lieutenant Governor of Virginia should nominate 3 or more Commissioners (not exceeding five) who in conjunction with a like Number, to be named and deputed by the said Lord Fairfax, should settle and Survey the marks and Boundaries of the said District of Land, agreeable to the Terms of the Patents under which the Lord Fairfax claims, within the Space of Two years after the Arrival of the said Order, And whereas there is a great difference of Opinion in the construction of the Grants aforesaid, what are and shall be taken and deem'd the first Heads or Springs of the Rivers therein mention'd, so that the Boundaries of the said Tract or Territory of Land cannot be finally settled or maekd, until His Majesty shall have determin'd that matter, and it being necessary in order to such Determination, that true and exact Plans & Surveys be made of the said Rivers, & other Facts and Circumstances examined into and ascertained, & a Report thereof made to His Majesty, Know ye therefore, that in Obedience to His Majesty's said Order, The said Thomas Lord Fairfax, reposing special trust & confidence in Charles Carter of the County of King George Esqr, William Beverley of the County of Essex Esqr and William Fairfax of the County of
2037 Westmoreland Esqr, hath nominated, deputed, and appointed, and by these presents doth nominate, depute, and appoint the said Charles Carter, William Beverley, and William Fairfax Commissioners on behalf of him the said Thomas Lord Fairfax, giving and by these presents granting unto the said Commissioners full Power & Authority to make or cause to be made any such Survey or Surveys as they shall think fit, for the better Discovery of the first Heads or Springs of the said Rivers Rappahanock and Potomack, & other Boundarys of the said Tract or Territory of Land, according to the true intent, meaning, & construction of the aforesaid Grants; And for that purpose to hire and employ such & so many Surveyors, Chain-Carryers, & Attendants, as they shall find necessary. And further to examine & inquire into all other Facts and Circumstances relating to, or concerning the said Boundaries, and to that End, to take the Affidavits and Depositions in Writing of any Person or Persons (being first Sworn before a Lawfull Majistrate) openly and plainly in the Presence of the Commissioners named on behalf of his Majesty, if they shall think fit to be present, and generaly to do, & perform all & every other matter and thing, that to them shall seem necessary, & expedient, for the true performance of the Service herein before mention'd, Hereby requiring the said Commissioners, to make a fulle true & exact Report of all Matters of Fact, & other their Proceedings specially, in Order to be laid before his Majecty for his final determination, concerning the construction of the aforesaid Grants, and the said Thomas Lord Fairfax doth further give and Grant unto the said Commissioners, full Power & Authority to mark & settle the Boundaries aforesaid,

after such determination of his Majesty shall be had & made,
2038 in Conjunction with such Commissioners as shall be nominated in behalf of his Majesty. In witness whereof the said Thomas Lord Fairfax hath unto set his Hand & Seal the thirteenth Day of September in the Tenth Year of the Reign of our Sovereign Lord George the Second, by the Grace of God of Great Britain France & Ireland King, Defender of the Faith, & in the year of our Lord one thousand Seven hundred & Thirty Six.

FAIRFAX. O.

In obedience to the order of His Majesty, & to the Governor's Commission thereupon, the Commissioners on the part of the King desired those of his Lordship, to meet them on the 25th of September at Fredericksburgh, and they themselves repair'd thither accordingly at the time appointed, as appears by the Narrative of their Proceedings hereafter following.

The Commissioners on the part of the King arriv'd punctually at Fredericksburg at the day appointed, where they found only two of those named by the Lord Fairfax, Mr. Carter was hinder'd by sickness who nevertheless came to us upon the 28th of September, and assented to all that his colleagues had agreed to before he came; These Gentlemen had not been Idle on account of his absence, believing the other two had power to proceed by virtue of their Majority.

In the first place the Commissioners on behalf of the King caus'd their Commission to be read empowering them in Conjunction with those appointed by the Lord Fairfax, to Survey, mark and ascertain the Boundarys in Dispute. But when his Lordships Commission came to be produc't it appear'd his Commissioners were only empower'd to Survey the controverted Bounded, that so a State
2039 of the Facts might afterwards be laid before his Majesty for his Royal Determination.

This Defect in the Powers given by the Lord Fairfax to his Commissioners was the more to be wonder'd at, because in his Lordships Petition to the King, He had humbly beg'd His Majesty to Order, that Commissioners might be appointed, not only to survey the Boundaries in dispute, but also to mark and ascertain them. Nevertheless after the King had graciously condescended to grant his Petition, yet his Lordship now declined giving the necessary Powers to make his own asking effectual. However that His Majesty's Gracious Intentions might not be wholly frustrated, the Commissioners on the part of the King, by Favour of the Governor's Instructions did yield at last to cause the Bounds in Controversy to be survey'd and to procure all the Lights they cou'd besides, to enable them to lay the whole matter as clearly as possible before His Majesty, In order thereunto the two following Preliminarys were first agreed upon

1. That in the execution of this whole Affair the Lord Fairfax shou'd defray one Moiety of the intire Expence

2. That the Bounds of all the Countys in the Northern Neck, tho' not in Dispute, shou'd be measured & laid off by the Surveyors of each County, that so the Extent of his Lordships Grant may the more distinctly appear. And Commissioners were sent to the said

Surveyors accordingly. After that we commission'd and caus'd to be sworn Mr. Mayo & Mr Brooks as Surveyors for His Majesty, who in Conjunction with Mr Winslow & Mr Savage on my Lord's part, shou'd run the courses & measure the distance of that Branch of Potomack called Cohaungoruton, from its confluence with Sharando, to the Head Spring thereof, with Orders to return an Exact
2040 Map of the said River, shewing all the Streams that run into the same on either Side. They were also directed to take the Latitude, & observe particularly where the said River intersected the 40th degree. And in order to enable them to perform this difficult Service, we allotted them 13 Men & a large quantity of Provision.

When these were dispatch't who had much farthest to go, we commission'd & swore Mr Gream on behalf of the King, and Mr Thomas on that of my Lord, to Survey and measure the South Branch of Rappahannock, from the first Fork to the Head Spring & return an exact Map of the same describing all the Rivers & Creeks that discharge their Waters into it. And because Mr Bream had not been much practiced in Surveying, we allow'd Him to make use of Mr Hume as an Assistant. We likewise order'd them to furnish themselves with 6 Men, & what Provisions shoul'd be necessary for their Subsistence

We then empower'd and swore Mr Wood for his Majesty, & Mr Thomas the Younger for my Lord, to Survey and measure the North Branch of Rappahannock, and gave them the same orders we had given to those Surveyors who went up the South Branch. They were also directed to provide the same Number of Men to attend them & to take care to be furnish't with Provisions

Before the Surveyors enter'd upon their business, we measur'd all their chains to try their exactness, & at the same time gave them all orders to form their draughts by the same Scale, that is to, say after the rate of Six hundred Poles to an Inch.

While we staid at Fredericksburgh we lodg'd at Colo Henry William's, but keps a magnificent Table at the Ordinary, and
2041 entertain'd all the Gentlemen that came to visit us, which were a great many. From thence we went to Colo Charles Carters where our Entertainment was by no means extravagant.

After all our matters were settled, relating to the Surveyors, we proceeded to the Fork of Rappahannock, and caus'd each Branch to be measured at the Mouth & found the North to be wider by 3 Poles and 9 Links tho' it was objected by his Lordship's Commissioners, that the South Branch was made narrower by an Island that ran along the South Shoar

We carry'd a Surloin of Beef with us from Colo Carter's & pick't the Bones of it as clean as a Kennel of Wolves wou'd those of a wounded Buck. The same Gentlemen furnish't us also with Strong Beer, but forgot a Vessel to drink out of. However we supply'd that want, with the Shell of a poor Tarapin which we destroy'd as Harry the 8th did Cardinal Wolsey, for the sake of his House. This shell we clean'd and drank out of it with as must Tast as if it had of Gold of Ophir, or one of Phalaris's Triacrian Cups. After this Refreshment we proceeded from thence to Germanna, where Colo Spotswood receiv'd us very courteously. And lest we should have

forgot the memorable Battles of the Duke of Marlborough, he fought them all over again to us the Nine and fortieth time

There the Commissioners for the King took the Depositions of Mr. Taliofero, and Mr. Thornton, and those for my Lord, that of Mr. Russell, relating to the time the upper parts of Rappannock have been inhabited, the particulars whereof will best appear by the Depositions themselves

John Taliofero, Gentleman about forty nine Years being sworn, Saith

That in or about the year of our Lord One thousand Seven Hundred and Seven, he came up to dwell where he now lives
2042 above Snow Creek, which he takes to be Nine Miles below the Falls of Rappahannock River, and that there was then but three Settlements above his House on the South side of the River & on the North side of the River the uppermost Plantation he knew of at that time, was about three Miles below the Falls. And he has been acquainted with the Fork of the River about twenty four Years & that one of the Forks was called the South Fork, and the other the North Fork, untill Colo Spotswood above twenty Years ago named the South fork Rappidan, and it has ever since been so called, but the other has all a long been call'd Rappahannock, or the North River

JOHN TALIOFERO

Francis Thornton of Caroline County Gentlemen aged fifty three Years and upwards, being sworn declared

That about Thirty four years ago. He came up to dwell where he now lives, below or on the lower Side of Snow Creek, which he takes to be Nine Miles below the Falls of Rappahannock River, and that then there were but two Settlements above his House on the South side of the River, the uppermost of which was about four Miles below the Falls. And on the North side of the River the uppermost Plantation he knew of at that time, was about two or three miles below the Falls & that he has been acquainted with the Fork of the River Rappahannock about Six or Seven and Twenty Years, and that one of the Forks was commonly called the South Branch and the other North Branch.

FRAN THORNTON

2043 William Russel aged Fifty Six Years & above being sworn, Saith

That he has known the great Fork of Rappahannock River thirty five Years as a Hunter, and that one of the Branches has always been called the South River or South Fork of Rappahannock, and the other the North River, or North Fork, till he heard that Colo Spotswood named the South River Rappidan, & the other since that hath been called Rappahannock, and that the uppermost Settlement thirty odd Years ago was a Tobacco House built by Capt. Mount-joy, now Colo Carters Quarter on the North side of the River, a little below the Fork, and that there was a Plantation at Seales about two Miles below the Falls. And that he saw some Posts of a House on

Motts Land upon the South Side of the River, which was said to be a House burnt down by the Indians, being about three or four Miles above the Falls, near thirty Years ago

WILLIAM RUSSEL
his W Mark

These were all the Depositions that were taken by the Commissioners at the time. next follow the Commissions granted to the Surveyors

By the Commissioners appointed in behalf of His Majesty for settling the Boundaries between His Majesty & the Right Honourable Thomas Lord Fairfax Proprietor of the Northern Neck

By vertue of the power and Authority to us given, We do hereby nominate & appoint you William Mayo & Robert Brooke Surveyors, in conjunction with such Surveyors as shall be appointed on the part of the Lord Fairfax, to survey & trace the River Cohongoruton as it is now commonly called, from its confluence with the
2044 River Sharando, according to your best Skill & understanding, keeping up the main Stream thereof, to its Source or Head Spring & we do require you at your return to prepare & deliver to us an exact Plan or Map of the same together with a fair copy of your Field Notes, in which you shall fully and clearly describe all the Streams or Rivers falling into the same, by such Names as they are known, or called by the Indians or other Inhabitants & also to find the Variation of the Needle, and to observe the Latitude at all proper places especially noting where the Fortieth Degree will intersect the said Cohongoruton River & we do hereby give unto you the said William Mayo & Robert Brooke full power and Authority to carry with you Six chain carriers to be by you Sworn, according to the Law of this Colony and to agree with them for Wages not exceeding Three Shillings per Day, for which Service both you & they will be duly paid out of His Majesty's Revenue at your return, and we do hereby require all his Majesty's Subjects inhabiting the Colony of Virginia, and request all others in the Neighboring Provinces through which you may have occasion to pass, to be aiding & assisting to you as occasion shall require, Given under our Hands & seals, this Twenty seventh Day of September in the year of our Lord 1736

W BYRD O
JOHN ROBINSON O
JOHN BRYMES O

By the Commissioners appointed in behalf of his Majesty, for settling the Boundaries between his Majesty & the Right Honourable Thomas Lord Fairfax Proprietor of the Northern Neck.

By Vertue of the Powers & Authorities to us given, We
2045 hereby Nominate and appoint you John Greme Survey in Conjunction with such Surveyor who shall be appointed on the part of the Lord Fairfax, to survey & trace the River Rappahannock, as it is now commonly called, from the Falls of the said

River to the first great Fork thereof, and thence keeping up that Branch commonly called the Rappidan River going up the main Stream thereof to its Source or Head Spring—And we do require you at your Return, to prepare and deliver to us (according to your best Skill & understanding) an exact Plan or Map of the Same, together with a fair Copy of your Field Notes, wherein shall be justly & clearly described all the Streams falling into the Same, by such Names as they are Known or called by the Inhabitants of those parts; And also to take such observations of the Variation of the Compass, and of Latitude all proper places as may be necessary for the greater Accuracy of your Plan. And we do hereby give unto you full Power & Authority, to take with you three Chain carriers, to be by you sworn according to the Law of this Country & to agree with them at Two Shillings and Six pence per day; for which Service both you & they will be duly paid out of his Majesty's Revenue at your Return. And We do hereby require all his Majesty's Subjects, inhabiting this Colony to be aiding and assisting to you as occasion shall require

Given under our hands and Seals this Twenty Seventy day day of September in the Tenth Year of the Reign of our Sovereign Lord George the Second King of Great Britain &c

Annoque Dom 1736

W. B O
J R O
J. G. O

2046 By the Commissioners appointed in behalf of His Majesty for settling the Boundaries between His Majesty and the Right Honourable Thomas Lord Fairfax Proprietor of the Northern Neck

By vertue of the Powers and Authorities to us given, We do hereby nominate and appoint you James Wood Surveyor in conjunction with such Surveyors as shall be appointed on the part of the said Lord Fairfax to survey & trace the North Branch of the River Rappahannock now commonly call'd Rappahannock, from the Fork or place where the Rappidan River falls into it, keeping up the main stream thereof to its Source or Head Spring. And we do require of you at your Return to prepare and deliver unto us according to your best Skill and understanding, an exact Plan or Map of the same, together with a fair Copy of your Field Notes wherein shall be fully and clearly described all the Streams and Rivers falling into the same, by such names as they are known and called by the Inhabitants of these parts. And also, to take such Observations of the Variation of the Compass and of the Latitudes at all proper places, as may be necessary for the greater accuracy of your Plan. And we do hereby give unto you full power and Authority to take with you three chain carryers, to be by you sworn according to the Laws of this Colony, and to agree with them at Two Shillings and Six Pence per Day, for which Service both you and they will be duly paid out of His Majesty's Revenue at your Return. And We do

hereby require all his Majesty's Subjects inhabiting this Colony, to be aiding and assisting to you as occasion shall require.

Given under our hands and Seals this Thirtieth day of
2047 September in the Tenth Year of the Reign of our Sovereign Lord George the Second King of Great Britain &c Anno*q*
Dom 1736.

W BYRD O
J ROBINSON O
J GRYMES O

We dispatch't away these Surveyors without Loss of time, but they seem'd in no great Hurry themselves, They loiter'd so long at their first metting out, that the Commissioners thought it necessary to spur them with the following Letter.

OCTOBER 5TH 1736

Your proceedings Gentlemen have been very dilatory & we can't construe your conduct otherways than you imagine you are to be paid by the day & that you intend for that reason to make the most of, But that you may not deceive yourselves & spend your time in Sloath & Merriment, we give you this fair Warning, that we will make a strict examination of every days proceedings, that you be paid according to your time, but according to your deserts, You ought to consider that the settled wages of the Chain Carryers will be a great Addition to the extraordinary expence already contracted and for that reason as well as that for your own Credit, you are bound with failtfull Diligence to prosecute the work, you have with too much Slackness began. We trust this necessary reproof will have its effect, recommend you to the good opinion of

Y. H. S.

W. BEVERLEY W BYRD
W. FAIRFAX C CARTER

2048 Having mentioned before that we ordered the Surveyor's in the Northern Neck to survey the Bounds of their Respective Countys and return a correct Map thereof, it may be proper to set down a copy of one of these Orders whereby a Notion may be form'd of all the rest

By the Commissioners appointed in behalf of his Majesty for settling the Boundaries between His Majesty and the Right Honourable Thomas Lord Fairfax Proprietor of the Northern Neck

By vertue of the Power & Authorities to us given we do hereby appoint you John Savage Surveyor of Stafford County, forthwith to survey & trace the Bounds of your said County, from the Creek Call'd upper Neckotick to the run of Chappawamfick, according to your best Skill and understanding. And we do hereby require you to prepare and deliver to us upon oath an exact Mapp or Plan of the same, by a Scale of 800 Poles to one Inch together with a fair Coppy of your Field Notes, wherein shall be truly and clearly described, all the Rivers & Creeks within your said Survey by their proper

Names, with the true wedth of the same, including the said Run of Chappawomfick & Michotick Creek and also to take observation of the Latitude at Paspatansie, and we do hereby give you full Power and Authority to employ Two Chain Carryers, who shall be duely sworn according to the Laws of this Country & to agree with them for Wages not exceeding Two Shillings & Six Pence per Day, for which Service both you and they shall be duely paid, and we hereby require all his Majesty's Subjects inhabiting the said County of Stafford to be aiding and assisting to you as Occasion shall require

2049 Given under our hands & Seals this Thirtieth day of September Anno Domini 1736.

J G J R. W. B. O

On the back of this order was the assent of my Lord Fairfax's Commissioners under all their names in the words following.

We the Underwritten Commissioners in behalf of the Lord Fairfax do hereby declare our assent that the within service be done by the said John Savage, for which we agree to be at equal expence, the said Surveyor delivering to us also an exact Plan or Map of the same and a fair Copy of his Field Notes

W F W B. C C

The Affidavit of Thomas Harrison Shewing When the Upper Settlements were Made upon the Upper Parts of Potomack

Thomas Harrison of the County of Prince William Gent ages Seventy five Years or thereabouts being sworn and Examin'd Deposeth that he hath lived ever Since he was a Child on the Plantation where he now dwells on Chappawamsick Run, about forty Miles below the Falls of Potowmack, except about three years when he lived at Hunting Creek; that about Sixty three years ago the uppermost Settlement on Potowmack was no higher tham Hunting Creek, which he takes to be about 15 Miles below the Falls, that in the war with the Susquehanna Indians the People who had seated there were beaten off from their Settlements and obliged to retire lower down the River, that about 50 Years ago Sundry Familys

2050 Seated again about Hunting Creek but at that time the Falls of Potowmack were not Known as ever he heard of. But about 36 or 37 Years ago when he went up to live at Hunting Creek he had heard People talk of going up thither to fish, but never heard that any one adventured up so far as the Falls about that time the Indians frighting all People from Venturing so far that he hath heard of the Falls he believes about 50 Years or near that time

This was sworn before me in the presence of all the Kings Commissioners and two of those appointed by the Lord Fairfax the 17th day of June, 1737

W. BYRD

Next follows the Epistolary Correspondence between the Commissioners on both Sides after they were Separated from each other,

and the first Letter was from the Kings Commissioners to those of the Lord Fairfax.

DECEMBER THE 16. 1736.

GENTLEMEN

There being little likelihood that the weather will soon allow us the Pleasure of meeting You, we take this opportunity to let you know that Mr Wood has return'd us his Survey of the Northern Branch of Rappahannock River, which he measured fairly from Water Edge to Water Edge and not from Bank to Bank as we have been informed your Surveyor Mr. Thomas did, when he Surveyed the South Branch with the Intent, to be sure, to make that appear wider than the North. As this seems to have been an un-
2051 righteous Proceeding in that Officer, We Can't persuade ourselves that you gave him any such Orders but that the Artifice was all his own.

We propose to give the necessary Directions for Surveying the Northern Branch of the Little Form of Rappahannock, that so when the General Map of the Northern Neck comes to be form'd, it may shew among other things how far the King has granted; and we can by no means doubt of your concurrence in a Matter that will set the present Controversy in the clearest Light. We heartily wish you all the Diversions of the approaching merry Festival and are.

Gentlemen Your most humble Servants.

W BYRD
JOHN ROBINSON
JOHN BRYMES

The Commissioners on the part of the Right Honble the Lord Fairfax return'd the following Answer to the foregoing letter.

FEB.Y 5TH 1736.

We receiv'd your Letter of 16th of December, and shou'd answer'd it some Time ago, if the late very cold Season had not rendered out meeting hitherto impracticable.

We take notice that Mr Wood has deliver'd you his Survey of the North Branch of Rappahannock River, with which you are not satisfied, And desire our Concurrence to survey the North Branch of the Little Fork, That as you say it may appear by the General Map how far the Crown has granted.

We think we have Reason also to complain of Artifice used by your Surveyors on the South River, and as we know of none used
2052 by ours, so we believe on the other hand, You gave no Orders to Counterfeit unfair Practices. Thomas the Elder has acquainted us, that after they had measured up to the last Fork of the South Branch, He was of Opinion they ought to proceed up the South Branch of that Fork called Canaway River, but Mr Graeme positively refused, saying that if the said Thomas went up Canaway River, He shou'd bear the Expence, upon which Mr Thomas declin'd and proceeded up the No Branch wherefore we must insist upon having the said South Branch called Conaway River also measured up to

the Head Spring, as being likewise absolutely necessary, otherwise it will not appear by the General Mapp how far Lord Fairfax claims. We have therefore order'd Thomas the Elder to measure that Branch and if you think it necessary that Mr Graeme shou'd assist in doing it, we hope you will please order him out, so as that it may be done before the Spring. Thomas the Elder has assured us He never measured the South River but once from Bank to Bank, and then it was to satisfy himself how much broader the Stream could be made by any great Freshes

His Lordship being acquainted with our Consent to your Proposal of having the whole Northern Neck Survey'd, has directed us to move, that the River Rappahannock be survey'd & measured on the South Side thereof to the outermost Banks of which his Lordship also claims.

We conceive the execution of our Commission has been now pretty well advanced so as to make another Conference necessary, therefore desire to meet you at Tapahannock in the County of Essex, unless you can recommend a place more suitable to all the Commissioners, and shall be glad, to see you as soon as possible, in Order, and
2053 in hopes to set all matters right

We are Gentlemen

YOUR MOST HUMBLE SERVANTS

The Answer of the King's Commissioners to the Foregoing Letter.

APRIL 26, 1737

GENTLEMEN

Your Letter of 5th of February came to the Hand of one of us, some time ago, but by several Misfortunes it cou'd not be considered by all Three till very lately, for which reason we could not answer it sooner. No body can doubt but the more exact and particular the Map shall be of the Lands in Controversy, the easier will be the Determination upon it, and therefore upon your first application we immediately consented to a Survey of Gonaway River, and it is already perform'd. For the same reason we are of Opinion that the Survey of Rappahannock River shou'd be made on the North Side, and as that was our general Sence at the meeting in September last, and the Powers were then made out, upon which the work has in a great Measure been carry'd into Execution, we conceive your present Request that the River Rappahannock be Surveyed and Measured on the South Side thereof, is now out of time and would be attended with great delay as well as Expence; And as the time in which we are required to finish our Reports draws near, we hope his Lordship will not insist upon so considerable an Alteration in the Measures which were unanimously agreed on Eight Months ago. We hope the Surveys will be all return'd by the 15th of June, and we shall then be glad to meet you in Williamsburg, where we may be al most conveniently accommodated

We are
Gentlemen Y. M. H. S.

2054 Two of Lord Fairfaxes Commissioners came to Williamsburgh, to whom the foregoing Letter was deliver'd, and they seem'd to be convinc't of the reasonableness of meeting at Williamsburgh, not only because we shou'd be near any record we might happen to want, but also because meeting at Tappahannock would be attended with more Expence, without furnishing proper Conveniences for so many persons as wou'd have Orders to attend us, Thus, tho' these Gentlemen seem'd to acquiesce in our Arguments, yet they altered their Opinion as soon as they saw their Colleague, and soon after wrote us the following Letter

MAY 10TH 1737

GENTLEMEN

We have considered yours of the 26th of April, which we find we are to accept as your answer to ours of the fifth of February; but we cannot agree with you in Opinion, That because you desire to have the Map Exact and particular you consent to a Survey upon Conaway River, and for the same Reason deny your assent, that the Survey of Rappahannock River should be made on the South Side. If we have desired and insisted to have the River Rappahannock Surveyed, has it not been subsequent to your proposal to have the whole Northern Neck plotted, and tho' we consented thereto Eight Monts ago, We did then, and have always thought a Survey of more then the Controverted parts unnecessary, both as to the time and Expence. And we cou'd not well imagine our Request, to have the said River survey'd on the South Side, could with any equitable Reason's be refused; If not appearing to us that such an alteration was so consider-
2055 able, as to be attended with any delay or Additional Expence to your said Proposal. We are now Sensible that whenever you signify your Pleasure to us, we must not dispute the Justice thereof, and if we offer any motion with undeniable Reasons to support it, no Regard is paid thereto.

We think all the Surveyors yet expected may be return'd by the last of this month, after which time we ought to meet at some convenient Place near the Northern Neck, Where the Surveyors and any Person required might attend us at the easiest Expence, in order to consider of and prepare fit Matter for the general Map and Report, to be finally agreed on and concluded at Williamsburgh the fifteenth of June, as you have propos'd, where we shall also gladly agree to meet you, when we can have any assurance, that you will proceed with all becoming Dispatch, as our undivided Powers require, which the little you did towards preparing a Report when last at Williamsburgh, gives us cause to mention. We are

Gentlemen Y. M. H. S.

The Answer of the King's Commissioners to the Foregoing Letter.

JUNE THE 16TH 1737

GENTLEMEN

We shall not answer your Letter in your own polite terms, but only observe modestly some of the most remarkable Passages of it.

In the first Place your way of arguing is very notable, you lay it down as a Fundamental Maxim, that you always thought it unnecessary to Survey more than the controverted parts, yet in the same
2056 Breath insist upon having the South Side of Rappahannock survey'd which is utterly out of Dispute. That River is a certain uncontroverted, Boundary, and therefore to Survey that wou'd be a wantonness of Expence without any Benefit which for that Reason we can't come into. Tis true you say it would be no Additional Charge tho' that is as much above our Apprehension as the use of it wou'd be if it were done.

In the next Place you tell us plainly you find you are not to dispute the Justice of what we propose. This if it have any meaning, is a Severe Reflection & must signify, that out Stile is positive and Dictatorial, & we pay no regard to the weighty reasons you are pleas'd to offer in Support of your Opinions, We conceive an Accusation of this heinous Sort wou'd have been back't with some Instances, if you had any, but as none of them appear, we must look upon it as a random Shot, intending only Mischief in general.

We thank you for being so very gracious as to promise us a meeting if you found we had proceeded with all becoming Dispatch. This, besides the Air of Superiority with which it is expres't, is a plain insinuation that we had been guilty of delaying the Business we have the honour to be entrusted with. We absolutely deny the Charge, and at the same time take the Liberty to say, that had the Dispatch been as becoming on your part, as it has been on our's, the Business might have been terminated before this time. You may please to remember how many Months the King's Order to his Governor was witholden before it was deliver'd, whereby the Season for surveying the Bounds in Controversy was lost for that Year. We must also remin'd you how much time was lost after his Majesty's Commissioners were named, before it was resolv'd what Commissioners to appoint on the Part of My Lord Fairfax, and after all they were not to be trusted with Powers, to determine the dispute, tho'
2057 those were the express Terms of His Lordship's Petition to his Majesty.

Another Delay on your side which we must complain of as extremely unfair, was, that after it was Solemnly agreed by the Commissioners on both Sides to Survey all the Countys in the Northern Neck, and the respective Surveyors had orders for that purpose, one of you Gentlemen took upon you by his own Authority to countermand that Order, and direct one of the Surveyors not to proceed.

We are mistaken, if this be proceeding with Decent dispatch and since you make that the Condition necessary to intitle us to the honour of Meeting you, we must call upon you to name one Instance, whereby we have delay'd the Business. Indeed we have not thought proper to obey your Summons to meet you at Places which appear to us not so proper as Williamsburgh.

Upon the whole matter, we think you have made use of Several Expressions in your Letter abovementioned, which are very injurious, we must therefore insist that you'll either make out your Charge, or else by owning your mistake decently acquit

Gentlemen Y. M. H. S.

To this Letter we had the following Answer

JUNE THE 16 1737

GENTLEMEN

We have receiv'd your Letter of this Date and have only to say, that we came to Town in hopes of meeting you, to agree in proper measures to execute the purport of our Commission, and not
2058 to enter into endless disputes which will unaboidably occasion those delays each of us disclaim. We therefore desire you will please to appoint some time and place to proceed thereon

The Kings Commissioners found by this concise Letter that his Lordships Commissioners wou'd neither make good their Accusations, nor say anything to excuse them, For which reason, we immediately sent the following insisting Letter.

JUNE THE 18, 1737

GENTLEMEN

You have us'd us ill and without a proper Reparation on your part, we shall think ourselves obliged to make the best Representation we can without the Advantage of your Assistance. We are however very desirous to be, if you would vouchsafe to do us Justice

Y. H. S.

After we sent this Letter we heard no more from them but they left the Town without any farther Ceremony. We therefore determined to proceed to make our Report without them, which we cou'd the better do, because the Surveys were all made, and the Facts settled. But as a foundation of our Report, we order'd Mr Mayo to form the General Mapp out of the particular Ones. But as four of the Surveyors had not return'd the Surveys of their Respective County's in the Northern Neck, (We suppose by the contrivance of some of my Lord's Commissioners') we sent them the following Letter to quicken their Diligence and to return their Plats out of hand

JUNE 18. 1737

SIR

We are very much Surpris'd that you have not, in almost Nine Months time thought fit to return the Survey that you were ordered to make of your County, by us, with the assent of the Com-
2059 missioners of the Lord Fairfax.

Your Neglect in this particular, is a very great delay of the Business; and we expect that you immediately transmit to us your Map and Field-Notes pursuant to our Warrant, that a general Map may be form'd.

As this ought to have been done long agoe, we require that without further delay, you will either convey them immediately to one of us by this Messenger, or take care to bring them your self in a very few days, We are

Y. H. S.

At the same time we sent to the Proprietors Office in the Northern Neck for Sundry papers

JUNE THE 18TH 1737

SIR

Agreeable to what we mention'd to you this day. We desire you'll be pleased to send us from the Lord Proprietors Office attested Copys of two Grants to Phill. Ludwell Esqr; bearing Date about the year 1711. A copy of the Grant, for Brent Town; and the two uppermost Grants upon Potowmack River made on or before the year 1688. We are sir

Sir

Y. M. H. S.

To William Fairfax Esqr

On the Receipt of our Letter the 4 Surveyors abovementioned, thought fit to send us their Surveys very soon with a Letter of Excuse. And we dispatch'd their plats and all the rest to Majr. Mayo to be form'd into a General Map, with Orders to get it done as soon as possible, & bring it to us at Williamsburgh on the 3d day of
2060 August when the Kings Commissioners appointed to meet in Order to make their Report. Mr Fairfax too was pleas'd to send us the following answer to our Request abovemention'd

JUNE 22D 1737

GENTLEMEN

I received yours of the 18th Instant desiring to be sent you from the Lord Proprietors Office attested Copys of 2 Grants to Philip Ludwell Esqr bearing date about the year 1711 a Copy of the Grant of Brent Town, and the 2 Grants upon Potowmack River made in or before the year 1688. I have accordingly sent herewith attested Copy's of Col. Ludwell's 2 Grants, But that of Brent Town is not in any of the Books of the Office. I have writ to Mr Barradel acquainting him that my Lord some time ago left with Sir John Randolph an attested Copy of that Grant which Mr Barradel is desired to get of Mr Needler, who it is said has the Custody of Sir John's Papers, and to give you a Copy there of, which I presume will answer Your Intention

As to those other Grants upon Potowmack River, the first Book of Registry commences the 29th day of August 1690 when the said Colo Ludwell was Agent. For I did not receive from Corotomen any Paper or Book relating to any Grant past by his Predecessor Colo Nicholas Spencer, who was Agent about the 1688. If any such Papers be at Corotomen, I have not yet been able to procure them. I am

Gentlemen

Y. M. H. S.
W. FAIRFAX

2061 Whether the Proprietors Agents were so careless in those early times as to keep no Records or whether their Successors have lost them, on purpose to hinder those Grants from ap-

pearing, which shew how far they took the Proprietors Bounds to extend, is hard to say, but to be sure our correspondent told us the Truth.

Next follows Mr Fairfaxes letter whereby he forbad Mr Ball to proceed in the Survey of his County til farther Notice, not withstanding the positive Order of the Kings Commissioners confirm'd by those of His Lordship

SIR MARCH THE 16 1736.

His Lordship being acquainted with the Kings Commissioners Proposal and Order to have the lower Countys of the Northern Neck Survey'd and plotted, has insisted to have the South Shore of Rappahannock included in the Survey, according to his Lordship's claim The Kings Commissioners have been wrote to & their Answer expected. So that you will think proper to Suspend the Execution of their Orders for Surveying till further Notice. Mr Warner and Capt Barber are agreed to wait his Lordship's Commissioners Pleasure herein I am

Sir Your humble Servant

W FAIRFAX

It is therefore evident that Mr. Warner and Capt. Barber had also been writ to by the same worthy Gentlemen to wait the Pleasure of his Lordships Commissioners, as well as Mr Ball

2062 According to the order of the Virginia Commissioners Major Mayo form'd a very elegant Map of the whole Northern Neck by joining all the particular Survey's together. In this Map were very neatly and very plainly delineated the several Branches of Rappahannock River quite up to their several Sources, together with all the Creeks that flow into the same on either Side. The River Potowmack was therein likewise traced with great Exactness from the Mouth, up to the Fork a little beyond the Blue Ridge of Mountains, and from thence up the North Branch call'd Cohungoruton—quite away to the Head Springs thereof, with all the Waters that discharge themselves into it. And the Distance Cohungoruton runs from its Confluence with Sharando, is according to the Meanders thereof 206 Miles to its Foundation From the Hills out of which this River arises, may be seen other Waters which run Westward, and may be the Springs of one of the Branches of the Mississippi, probably that commonly called Allegany. In this Map the Courses of Sharando are not described, but just where it parts with Cohungoruton, by reason such Description cou'd give no light to the Controversy betwixt His Majesty and the Lord Fairfax.

And here I think I ought to do Justice not only to the uncommon Skill, but also to the Courage and Indefatiguable Industry of Majr Mayo and two of the other Surveyors, employ'd in this long and difficult Task, Neither and unexpected Distance, nor the Danger of being doubly Starved by Hunger and excessive Cold, could in the least discourage them from going thro' with Their Work, tho' at one time they were almost reduced to the hard necessity of cutting

up the most useless Person among them, Mr. Savage, in order
2063 to Support and save the lives of the rest. But Providence prevented that dreadful Blow by an unexpected Supply another way, and so the Blind Surveyor escapt.

On the 3d day of August the Kings Commissioners met at Williamsburg according to their Appointment, in Order to draw up their Report. And that they might do this part of their duty with the more Exactness Majr Mayo attended at the same time with his Map, with which they were exceedingly Satisfy'd, the same being a masterly performance.

Great Pains were taken to make this Report with all the Justice imaginable, both to his Majesty and the Lord Fairfax, And altho' the King's Commissioners drew it up without the Assistance of those on the part of his Lordship, who modell'd a Report of their own, yet they endeavored to do it with all farness to both Partys: Nor did they represent any thing therein, but what depended upon plain Facts, or might be very righteously deduc'd from them, All this appears by the Report it self, which was in the Terms following,

To the Houble William Gooch, Esq., His Majestys Lieutenant Governor and Commander in Chief of the Colony and Dominion of Virginia:

The Underwritten Commissioners appointed by your Honour in Obedience to the Order of his Majesty in his privy Council of the 29th of November 1733 for surveying and settling the Boundaries of that Tract or Territory of Land granted by the Crown to the Ancestors of the Right Honourable Thomas Lord Fairfax and under whom his Lordship now claims, Do humbly beg leave to lay before your Honour the following Report of their Proceedings and the Reasons why they have not been able finally to determine
2064 the said Boundaries according to his Majestys royal Intentions.

After we had the honour to be named Commissioners on the part of His Majesty, the Lord Fairfax by Mr Barradall his Agent signified to your Honour in Council, That if the King's Commissioners were Members of the Council, His Lordship was contented that the same Commissioners shou'd likewise Act in his behalf, without appointing any distinct Commissioners of his Own. This induced us to wait on his Lordship with our Commission from your Honour, to know whether his Lordship wou'd be pleased to give us powers to Act for him conformable to his Majesty's Order, But we soon found his Lordship had alter'd his mind and no declar'd that he would not submit the determination of his right to any person in this Country, nor give any other Powers than barely to Survey the several Boundaries claim'd by him, and to report the Facts and circumstances examined into, to be laid before His Majesty, and soon after tender'd us his Commission for that purpose; This being contrary to his Lordship's Petition and the King's Order thereupon, We judged it unbecoming us to receive any Powers so different to those from his Majesty: and for that Reason, return'd it to Him.

His Lordship therefore thought fit to appoint three Commissioners

on his own part, namely Charles Carter, William Beverley & William Fairfax, Esquires

These Gentlemen we met at Fredericksburg near the Head of Rappahannock River on the 25th of September 1736 And after the Commissions on each Side had been produc'd and read We observed that his Lordship's Commissioners had no authority given them to determine anything concerning his Lordship's Bounds.

2065 We made the proper objections thereto as being inconsistent with his Majesty's Order. But were answer'd that His Lordship would by no means leave the Decision of the Controversy to any Commissioners whatsoever: When we understood this, we found Ourselves under a Necessity either to return Home without doing any thing, whereby His Majesty's gracious purpose would have been wholly disappointed, or else by the Latitude which our Commission gave us to drive the Nail that wou'd go, and join with them in obtaining a full and faithful State of the Facts in Order to be laid before His Majesty. Thus far we yielded to Act in Conjunction with the Lord Fairfaxes Commissioners, altho' they were not required by their Commissions to act in Conjunction with us

After this, we desired to know of my Lords Commissioners what they demanded in his Lordships Name as the Bounds of his grant? To which they answer'd, that he claimed all the Land contain'd within the South Branch of Rappahannock River, and the main Branch of Potowmack as high as the head Springs thereof. This extensive demand we apprehanded would include many of the Kings Loyal Subjects, who at a great Expence have seated themselves within those Bounds under Grants from His Majesty and his Royal Predecessors.

However, that the matter might be fully and fairly Stated, and His Lordship no longer delayed, It was agreed upon our Proposal, that the whole Territory claimed by his Lordship should be Survey'd, that so, the extent of his claim might the more fully appear. And that in performing this Service, and in executing the other parts of our Commission, his Lordship sho'd bear one moiety of the Expence.

2066 Then in Conjunction with my Lords Commissioners We directed the main Branch of Potowmack River called Cohaungorooton to be Survey'd to the head Spring thereof, and appointed Mr. Mayo and Mr Brookes who we thought equal to difficult Service on the part of his Majesty; to These were join'd Mr Winslow and Mr Savage for the Lord Fairfax These being all first sworn, were order'd by thier Several Warrants to begin at the Confluence of that River with Sharando, and from thence to run the Courses, and measure the Distances thereof to its first Spring; And of all this to return an Exact Plat, shewing all the Streams running into the same on either side, together with a fair Copy of their Feild Notes. We also directed them to take the Latitude, and observe particularly where the said River intersects the 40th Degree.

And to enable them to perform this arduous Work, We allotted them a Suffecient Number of Men for their Assistance and Defence, and a Competent Quantity of Provisions for their subsistence.

When these Surveyors were dispatch'd, who had the most difficult Service to perform we appointed Mr Graeme to survey and measure the South Branch of Rappahannock, now call'd the Rappidan from the fork to the head Spring And, Mr Wood to survey and measure the North Branch, call'd Rappahannock, in like manner requiring them severally to return us an exact plat describing all the Streams or water Courses falling into each River, together with a fair Copy of their fe/ld-Notes; And also to take an Observation of the Latitude at the head Springs of each River. My Lord Fairfaxes Commissioners appointed Mr Thomas the Elder to proceed with Mr Graeme and Thomas the Younger with Mr Wood. We at
2067 the same time made out Powers to the Surveyor of the Several Countys in the Northern Neck, requiring them to survey and measure the boundaries of the Several Countys joining on the Rivers Rappahannock & Potowmack & the Bay of Cheasepeak

After these matters were dispatch'd the Commissioners on both Sides proceeded with the 4 Surveyors up the fork of Rappahannock River & causing each Branch to be measured they found the North Branch to be widest by three poles and Nine Links; but indeed the South Branch may be allow'd to be one Pole broader than our measure made it by reason that a small Stream of that breadth isued from it at some distance above, and form's an Island on the South Shoar

The Depositions of John Talliaferro, Francis Thornton and William Russell were taken in the presence of the Commissioners on both sides; And then having directed the several Surveyors to proceed with all Diligence upon the Services appointed them. We parted with the Lord Fairfaxes Commissioners, it being agreed on both Sides, that until the Surveyors shou'd have made their returns, nothing farther cou'd be done in this Affair

In pursuance of the Orders aforemention'd the Several Surveyors proceeded to survey the several River. And after encountering many difficultys have returned to us exact Plats of their Work, with Copys of their Field-Notes whereby to prove the truth of their performances, All which we immediately directed Mr Mayo to join in one General Map, and the same being now compleated in a masterly manner, we beg leave to make our Observations upon it: And moreover to state all the evidence we have been unable to procure
2068 relating to the Bounds in Dispute

All this, We think ourselves oblig'd to do Separately, and not in Conjunction with his Lordships Commissioners for the following reasons,

1st Because his Lordships Commissioners are not directed by their Commission to make their Report in Conjunction with those of his Majesty And therefore as those Gentlemen are at Liberty to make their Report Separately there is great Reason we shou'd be so likewise.

2nd Because when we desired them to join with us in naming a fit person to form the general Map, they refused, and declared they wou'd have a distinct Map drawn by their own Surveyors; If then we could not agree in forming the Map which was to be the founda-

tion of the Report, we *d*ou'd have little hopes to agree in the Report itself.

As the Lord Fairfax's claim of all the Lands lying between the Northern and Southern Branches of Rappahannock River has greatly alarmed the Inhabitants of the Fork, and may very much Affect their property, we shall in the first place State all the Facts and Evidence relating to that Affair.

We cannot find by any Evidence that the Fork of Rappahannock River had been at all discover'd at the time *a* that the Lord Colepepper obtained his Grant, But on the contrary from the Evidence of JohnTalliaferro, Francis Thornton, & William Russell it appears that in the year 1707, there were no Inhabitants on either side the River so high up as the Falls thereof, which is about fourteen miles below the Fork. William Russel, who is an old Man, and was produc'd by the Lord Fairfax, says he discover'd the Fork about thirty five Years ago, as he was hunting, and Mr Thornton about
2069 twenty Seven Years ago, But these circumstances are much posterior to his Lordship's grant.

From the Surveys return'd to us, We cannot say which of these Branches is the Largest, only by the measure we made the North Branch was found to be the widest at the mouth; But from the Face of the Map, it evidently appears, that the North Branch has more & Larger Streams falling into it which must occasion a greater Run of Water, That it lays in a more direct Course with the main River: and that its head Spring lyes farther from the Fork than any Spring belonging to the South Branch.

As the Lord Fairfax has produc'd to us no Evidence to support his pretent*i*ons to the Southern Branch; We shall humbly offer the proofs in behalf of his Majesty for restraining his Bounds to the North Branch in case it shall be allowed that his Lordship has a right to go beyond the Fork of the River.

The North Branch has from the first discovery of it, bee*l* called by the name of Rappahannock in all publick Writings; Whereas the South branch about 20 years ago, by way of distinction obtained the name of Rapidan; it has been a settled Boundary to the Countys in the Northern Neck, and if the sentiments of the Legislature of this Colony ought to have any upweight it is evident, the General Assembly were of Opinion that the North Branch was the true Boundary of the Proprietors Grant, For in the year 1720, an Act of Assembly passed for erecting the County of Spotsilvania, which county is particularly bounded on the North by the River Rappahannock, That is by the Branch which before was made the boundary of the County of King George and is the North Branch: And for
2070 the encouragement of settling that Frontier the General Assembly the same year did address his Late Majesty to exempt the Persons coming to settle there, from the purchasing Rig*th*s, and payment, of quit-Rents for all the Lands which shou'd be taken in that County: Which Privile*d*ges and advantages His said Late Majesty was graciously Pleas'd to grant under some Restrictions, And upon this Encouragement it was, that all that tract of Land between the River Rappidan, and that Call'd Rappahannock, have

been seated, cultivated and improved, to the great Benefit and General Security of the Colony, as well as the encouragement of People to seek and Cultivate the Lands lying contiguous on the North side Rappahannock River to the encrease of his Lordship's Quit rents.

The Lord Colepepper who was the Original Patentee made a Grant to Brent and others dated the tenth day of January 1686 of a large Tract of Land to be laid off in such a Manner as not to come within Six miles of the Rivers Rappahannock or Potowmack, accordingly that Distance was observ'd from the North Branch which seems to be a Concession that it was taken by the Patentee himself from the beginning to be the main Branch of Rappahannock.

The first Patent in the fork of Rappahannock was granted by Governor Nott in the year 1705 and *and* altho' in the year 1706 Robert Carter Esqr who was then Agent for the Proprietors of the Northern Neck began to contest the right to the Lands in the Fork of Rappahannock, yet some years afterwards he himself was so far convinc'd, that the Proprietors could claim no further than the North Branch, that he took Patents from the Crown for two Tracts of Land in that very Fork which the Lord Fairfax wou'd now
2071 claim as his. And in the Several Grants of the Proprietors Lands made by him which bounded on the North Branch, he calls it the main Run of Rappahannock River as will appear by two Grants made to Philip Ludwell esqr

These last mention'd Grants, we must observe were passed in the Proprietors Office where the Grantor cou'd have call'd that Branch by what name he pleased, and no doubt he took care to call it by the right name. The last instance We shall give, is, that when the aforesaid Robert Carter Esqr. had the honour to be Commander in Chief of this Colony upon the death of Governor Drysdale in the year 1726, Altho' he was then Agent for the Proprietor, he granted Land in the King's Name in the little Fork as will appear by the Copy of Willis's Patent.

Thus, having stated the Facts relating to the River Rappahannock, we shall go on to those which relate to the River Potowmack, by the Deposition of Mr. Thomas Harrison, it appears that about fifty Years ago which is pretty near the time the Lord CoLepper obtained his Grant from King James the Second, there were not settlements made upon that River higher than Hunting Creek: And that at that time he knew nothing of the Falls of that River himself, But he believes he might have heard of them from the Hunters about that time.

The Lands at and near the Falls, were not granted til about the year 1709, nor can we find any Evidence, that it was so much as known that the River ran thro' the great Ridge of Mountains till Several Years that.

By the map, you may please to observe that the River Potowmack divides itself into two Branches, just beyond the blue Mountains, there the main River loses its name, and the North Branch, which is much the larger, is called by the Indians Cohungorooton,
2072 and the other Sharando, as therefore the name of Potowmack ceases at this Confluence, and the Branches into which its

waters are divided have quite their Names, The fork may not improperly be called the head thereof.

In the Year 1730 a Good Number of foreign Protestants were encouraged by the Government to settle beyond the Mountains, in order to strengthen our Frontiers on that Side; and they discover'd some distance up each of the aforemention'd branches, But none of these discoverys very far, till the Surveyor sent out by us the last Fall trac'd the River Cohungorootum quite up to the head Spring, which he found according to the Meanders thereof to be above two hundred Miles from its confluence with Sharando

It is evident from the Map, that the whole distance of this River stretches beyond the great Ridge whereas the head Springs of Rappahannock reaches no higher than those Mountains, We therefore humbly conceive it cou'd never be the Intention of the late King James the Second to bound the Territory granted to the Lord Co-Lepepper by two Streams, one of which runs more than two hundred Miles higher than the other.

This, Sir, is a full and fair State of the Case, and the Observations we have made thereupon, we hope will be thought very just, and as the Grant to the Lord CoLepepper seems to have been made much in the dark, it required to have all the Facts Stated as distinctly as possible; that those whose Province it may be to decide the dispute may pronounce such Sentence thereupon as will be most agreeable to Justice and Reason

All we shall presume to say farther is, that if it shall be
2073 thought just to bound to Lord Fairfax's claim by a Line drawn from the Fork of Rappahannock to the Fork of Potowmack, his Territory will then contain at least one Million four hundred and seventy six thousand Acres of Land

If the Line be drawn from the head of Hedgman River to the Fork of Potowmack his Lord-ship will then possess two Millions and thirty three thousand Acres.

And in case his Boundary shall be allowed to run from the Head of Hedgman River to the head Spring of Cohungorootun, then his Grant will contain three Millions eight hundred seventy two thousand acres

But if his Lordship be allow'd to extend his Boundary from the head of Conway Riveer to the Head Spring of Cohungorootun, including the great and little Fork of Rappahannock, he will then have at least five Millions two hundred and eighty two thousand Acres within his Grant, which is about as much Land as at present pays Quit rents to his Majesty in all the rest of Virginia

But if, his Lordship shou'd after all be so fortunate as to have these extensive bounds adjudg'd to him, We humbly beg that your Honour will be pleas'd to recommend to His Majesty the Case of all those persons who by Patents from His Majesty and his Royal Predecessors, are Possessed of lands within those Bounds.

Thus, Sir, We have proceeded with all Diligence and Fidelity, as far as we have been able, by reason the Lord Fairfax wou'd not empower his Commissioners to join with us in deciding and settling his Bounds But we shall be always ready to obey such further command

as your Honour shall hereafter receive from his Majesty relating to this Affair

All which is most humbly submitted by
2074 Sir Your Honours most humble Servants

W BYRD
JOHN ROBINSON
JOHN GRYMES

Williamsburgh August 10th 1737

The King's Commissioners having order'd Duplicates of their Report as well of the Map, to be made, presented them to the Governor in order to their being transmitted to His Majesty by the first Opportunity. In the mean time the Governour sent a Copy of this Report to my Lord Fairfax, not doubting but his Lordship wou'd in return favour Him with a Copy of the Report returned by his Commissioners. But that, it seems, was too great a Secret to be trusted with any one, that could judge the unfair Turns that were given to several Matters therein.

The Lord Fairfax soon after embark't for England, carrying over with Him the Report of his own Commissioners, and the Copy that had been sent Him of those on the part of the King. Thus arm'd, & being on the Spot Himself, his Lordship had a great Advantage. He was able to push his interest both with the Members of his Majesty's Privy Council, and those of the Council of Trade. However his Lordship having formerly withstood the Ministry in the Elections for the County of Kent, his Affair moved very heavily, or rather mov'd not at all, till the 12th of January 1738 when he obtained a reference to the Lords of Trade, for them to examine the whole matter, and report a full State of the Case, together with their Opinion thereupon to the Lords of the Committee of Council. Accordingly their Lordships maturely considered both Reports, together with all the Papers transmitted from Virginia, and having
2075 heard Council both for His Majesty; and the Lord Fairfax as to matters of Law, they were pleased on the 27th of July to return the following Report

To the Right Honble the Lords of the Committee of his Majesty&s most Honourable Privy Council

My Lords

Pursuant to your Lordships order of the 12th of January, We have had under our Consideration the two Reports of the Commissioners appointed in Behalf of the Crown and the Lord Fairfax, in relation to his Lordships claim of a large Tract of Land Situate in Virginia to gether with the Several Papers annexed to the said Reports whereupon we take Leave to acquaint your Lordships

That there were three several Grants from the Crown of this Tract of Land to the Earl of St. Albans, the Lord Culpepper and others

The first grant was made at St. Germaine en Laye in the first year of the Reign of King Charles the Second, This never came to our Hands, but is recited in that of a subsequent Date

The Second was made in the 21st Year of the said King's Reign & describes the Land in the following words

"All that intire Tract Territory or Parcell of Land lying and being in Virginia in America and bounded by and within the head of the Rivers Tappahannock alias Rappahannock and Quiriough or Potowmack Rivers the courses of the said Rivers as they are commonly called & known by the Inhabitants and the Descriptions of those parts and Chesapayock Bay to gether with the Rivers themselves & all the Islands within the Banks of these Rivers & all
2076 the Woods &c" And far Covenants upon application to be made to enlarge and confirm these Letters Patents by granting New Ones with such Concessions and Grants as may supply and Defects herein contained.

The 3rd. was made in the 4th. year of King James the Second to the Lord Culpepper who had become sole proprietor of the said Tract of Land (by a purchase made thereof) which it describes thus "All that entire Tract Territory or Parcell of Land "situate lying & being in Virginia in America and bounded by" & within the first heads or Springs of the Rivers Tapahannock "alias Rappahannock & Quiriough alias Potowmack Rivers, the "Courses of the said Rivers from their said first heads or Sprints "as they are commonly call'd or known by the Inhabitants & "Description of those parts & the Bay of Chesapayock together "with the said Rivers themselves & all the Islands within the "uttermost Banks thereof and the Soil of all and Singular the "Premises and all Lands Woods and Underwoods & Trees. "Ways Mountains &" It repeals a Proviso mention'd in the 2nd Grant in relation to the said Lands to be settled within a certain Term of Years & discharges the Lord Culpepper from any Arrear of the Rent to the Date thereof

It appears that Thomas Lord Culpepper in the year 1686 made a Grant of part of the Premises to M Brent & others of Thirty Thousand Acres in or near the County of Stafford between the Courses of Rappahannock and Patowmack

In 1705, a Dispute arose between the Crown and the late Lord Fairfax who claimed under Lord Culpepper concerning the Boundarys intended by the abovemention'd Patents in Particular Whether the North or South Branch of the River Rappahannock shou'd be understood to be the Boundary on that side. Whereupon in
2077 May 1706, the Governor & Council of Virginia issued an Order "Directing certain persons on behalf "of the Crown to meet others on that of the Proprietors to "view and survey the Branches of the said River and to make "their Report to the next General Court and that in the mean "time no Patent should issue for any Land lying in the Fork of "the said River either from the Governor or the Proprietors." This report was return'd the 28th of September 1706, by the Commissions on both sides jointly who say "That by what "appears to them they cannot discover which is the largest "Stream but that they seem to them to be of equal Magnitude.

In 1733, this Dispute was revived and the present Lord Fairfax having been informed that Several Grants had been made of Lands

which he apprehended to be within his Boundary he Apply'd to his Majesty in Council and obtained an Order to the Lieutenant Governor of Virginia "To nominate three or "more Commissioners (not exceeding five) who in Conjunction "with alike Number to be named and deputed by the Lord "Fairfax are to survey and settle the Marks & Boundaries of "the said District of Land agreeable to the Terms of the "patents under which the Lord Fairfax claims within the Space "of two Years after the Arrival of this Order and that the "Lieutenant Governor do not presume to make any Grants of "Lands within the abovementioned Tract

It does not appear that this Order tho' obtained in 1733 was notify'd to Majr Gooch the Lieutenant Governor till the Year 1735 during which time Grants were made by the Lieutenant Governor of about 300,000 Acres of Land in that District

In 1735 Lord Fairfax went to Virginia with the said Order and having presented it to the Lieutenant Governor a Commission
2078 was Issued by Him to William Byrd John Robinson & John Grymes Dates the 7th September 1736, "To Examine Settle & determine all Matters & things touching & concerning the Several Boundaries according to the true Intent & meaning & genuine Sense & Construction of the Several Letters Patent granted for the said Tract & Territory

The Lord Fairfax gave also a Commission to the same persons dated the 9th of the same Month "To make or Cause to be made any Survey or Surveys they shall think proper for the discovery of the first Heads or Sprints of the Rivers Rappahannock and Potowmack & other the Boundaries of the aforesaid Grants and to make a full and exact Report of all the matters of fact and other their proceedings Specifically to the Governour and Commander in Cheif of Virginia in order to be laid before his Majesty for his Determination

This Commission being Different from that granted by the Lieut. Governour the persons therein named declined to Act under it Whereupon the Lord Fairfax four Days after granted a New One to Charles Carter William Beverly and William Fairfax Esqrs with power to survey & report only till such time as his Majesty shall have given his Determination upon the said Boundarys

After some dispute between the Commissioners for the Vrown & those for Lord Fairfax in relation to the different wording of their Powers they proceeded on their Survey but not being able to Agree upon a Joint Report made Separate Returns each of them accompany'd with a Map describing the Courses of the two Rivers and the Outmost Lines of the intermediate Land which Maps are hereunto annext

We shall now take Notice of the principal Matters contain'd in their different Reports to gether with the proofs and Grounds
2079 upon which they proceeded

The Commissioners appointed by the Lieutenant Governor of Virginia in behalf of the Crown in their Report say

"That they took their Survey of the main Branch of Potow- "mack (called Cohungorooton) from its confluence with Shar- "ando, and so upwards beyond the blue Mountain to its first "Spring head, and

of the River Rappahannock from its fork "pursuing both North & South Branch to the Spring head like- "wise & found the North Branch to be wider at the Mouth "than the South by 3 Poles 9 Links, That they can find no "Evidence that the Fork of Rappahannock was known at the "time of Lord Culpepper's Grant That the Lord Fairfax has "provided no Evidence to Support his Pretentions to the South "Branch" But they the said Commissioners Offer some in support of his Majesty's which are chiefly arguments Inferences and Deductions drawn partly from the Sense of the Legislature in Virginia and partly from Grants of the Crown They then pursue their Account of the River Potowmack and refer to the Deposition of Thomas Harrison taken upon Oath before them "That the falls of Potowmack were not known 50 Years ago" They farther say "That the Lands at or near the Falls were "not granted till 1709, and that it was not known that the "River runs thro' the Mountain till Several Years after, "That the River loses its Name at the Confluence and is called "by the Indians as it does up higher Cohungorotoon & Shar- "and o" And conclude "That the Fork may not improperly "be called the head" which Opinion they endeavor to corroborate by saying "That as the head of Potowmack stretches "beyond the blue Mountains, and that of Rappahannock "reaches no higher than those Mountains, they coud not be "intended as Boundarys by the Grant of King James since the "one reaches above 200 miles
2080 above the other"

They conclude their Report by Stating four Several Boundaries for the Lord Fairfaxes Grant, and mention what Quantity of Land each of those Boundarys contains

The first from the Fork of Rappahannock to the Fork of Potowmack 1476,000 Acres of Land

The Second from the head of Hedgman River to the Fork of Potowmack containing 2033,000 Acres of Land

The Third from the head of Jedgman River to the head Spring of Cohungorouton including the Great & Little Fork of Rappahannock containing 5,282.000 Acres of Land

The Papers referr'd to in their Report are

1. The Governors Commission to them which was to examine Settle & Determine

2 Lord Fairfax to them which was only to Survey and Report.

3 Lord Fairfax's Commission to Messrs Carter Beverly & Fairfax which was to Survey & Report only.

4 Depositions taken upon Oath of John Talliaferro, Francis Thornton, & Wm Russell who severally declare there were no Inhabitants on either side of the River so high as the Falls even so late as the Year 1707.

5 A general Map of the Delineations of the Courses of the Rivers from the parts where they began their Survey up to their respective Spring heads

6 A copy a Grant from Lord Culpepper to Mr Brent and others in 1686 of Land to be laid out Six Miles distant at least from the
2081 Main Rivers of Rappahannock & Potowmack which being laid down in their Map as taking its distance from the North

Streams they Quote it to shew that the Original Patentee always understood the North Branch to be the Main Branch

7 Governor Notts Grant to Henry Beverley Esqr of 1920 Acres in Essex County ten Miles above the Falls of Rappahannock in November 1705.

8 Two Grants from the Governor to Robert Carter Esqr for Land in the Fork of Rappahannock 12 Miles and more above the Falls in January 1717.

9 Two Grants to Philip Ludwell Esqr from Lady Culpepper of 5860 Acres above the Falls in June 1709.

10 Henry Willis's Patent for 3000 Acres of Land in the Little Fork of Rappahannock from Governour Carter in February 1726

11 The Deposition of Thomas Harrison who declares upon Oath that the Falls of Potowmack were not known fifty Years ago Dated in June 1737

12. Letters Patent from King Charles the Second to the Earl of St Albans and others

13 Letters Patents from King James the Second to Lord Culpepper

The Commissioners for the Lord Fairfax in their Report give an Account

That) the Dispute between the Crown and Lord Fairfax being which is the Main River of Rappahannock the North or South Branch as appears by the Order of the Governor & Council of Virginia in 1706, to which they refer as also which is the first head or Spring of Potowmack) they have Survey'd and measured up
2082 the River Potowmack from the Mouth of Sharando and that of Rappahannock from the Falls to their Respective Heads or Springs, And are of Opinion that a Line run from the first head of Spring of the South or Main Branch of Rappahannock to the first head or Spring of the River Potowmack is and ought to be the Boundary Line determining the said Tract or Territory of Land commonly call'd the Northern Neck They refer themselves to the Evidences produced by the King's Commissioners (quoted in the other Report) that the two Branches of Rappahannock were always called the North and South Rivers or the North and South Fork and that the name of Rapidan was given to this latter by Colonel Spotswood when Governour as also to a Declaration of One Mr John Talliaferro that the Head or Springs of the said two Branches were known in 1682, And to their own Surveyors Report in proof that the South Branch was the widest They say their own Surveyor made a mistake in going up Conway instead of Thornton River which they have caused to be dotted in token of the Lord Fairfax's claiming it

The Papers referred to in the above Report are

1 The Order of the Governour and Council of Virginia in 1706, directing a Survey to be made of the Two Branches of Rappahannock to see which was the Main Branch, This Order is referred to by the Lord Fairfax's Commissioners to Obviate the Objections made of the Forks never having been claimed by the Proprietors of their Agents

2 The Evidences produced by the King's Commissioners of which we have already given your Lordships an Account

3. A Declaration of John Talliaferro This Declaration is annexed to the abovementioned Order in 1706 and is only a Copy and
2083 not upon Oath It contains that about 24 Years ago he in Company with Colo Cadwallader Jones had been at the Heads or Springs of the said Two Branches and that in his Judgment and that of the Company with him the South Branch was the Biggest & headed into the Mountains.

4 The Surveyors Report which ascertains that the South Stream was 21 Miles longer than the other

We having likewise on this Occasion been attended by a Council & having heard Mr Attorney and Mr Sollicitor General on behalf of the Crown & Mr Brown and Mr Murray for the Lord Principal Points insisted upon by both Sides

The Council for the Lord Fairfax opened with an Account of the three Grants and insisted strongly that the last being an enlarging Grant made with a View of Supplying any defects contain'd in the former and haveing these remarkable Expressions the first Heads or Springs of the said Rivers could leave no Room to doubt of his Lordships Right as there cou'd be but one first Head or Spring of a River, That the two Branches of Rappahannock having till 20 Years ago beel allways called and known by the Names of the North and South Stream of Rappahannock form but one and the same River. That Rivers not running Parallel may nevertheless by Boundarys. That the Extensiveness of his Lordship's Grant can be no Reason against it if the Title is properly made out as they conceived it was by the Description of the Words of the Patent. That neither the Falls of Potowmack, nor its confluence with Sharando can be called the first Head or Spring being both Currents or running Streams That the Land on the other side Vizt Maryland is bounded by the same River which is in all Writings called Potownack That there is no Evidence to Support the assertion that this River loses its Name and is
2084 called Cohongorouton. That the Lord Culpepper so long ago as 1686, made a Grant himself to Brent and others (as is beforementioned) and that Lord Fairfax contested the first Grant made by the Crown in 1705, within this District

On behalf of the Crown It was insisted that it cou'd not be supposed that the Letters Patents intended as indefinite Grant of Land by the Words first Heads or Springs especially since they were followed by these Words, As they are commonly called and known by the Inhabitants & Descriptions of those parts which made it necessary to prove that what is now called the first Head or Spring was so called and known at the time of the Grant by the Inhabitants & Descriptions of those parts of which they on the other side have brought but one kind of Evidence with respect to Rappahannock & that not a regular one being but a Copy & not taken upon Oath & as to the River Potownack none at all so as to extend it by Name beyond its confluence with Cohongorouton and Sharando That the place where a River loses its Name if there be no Spring there may be properly called the Head of it. That in Cases of old Grants on

which there is any doubts Possession has always been look't upon as the best Title & that Several Lands were held under the Crown in this District

To which is reply'd

That the first Grant of Lands in the Tract contended for was made by Lord Fairfax's Ancestors in 1686 to Brent That upon the first Grant made by Governor Nott in 1705 the Dispute arose & the Survey of the Two Branches of the Rappahannock was made That the Words commonly called & known by the Inhabitants & Descriptions of those parts related to the Rivers only & not to their
2085 Heads or first Springs. That John Talliaferro Francis Thornton & William Russel swear the Forks were both called Rappahannock till the Southern Branch was new named by Colo Spotswood about 20 Years ago

Having thus laid before your Lordships an Abstract of the principal Matters of fact contain'd in the Papers Transmitted to us as well as the Cheif Points insisted upon by the Council on both sides We shall now made some observations upon the whole

That there was a difference in the two Commissions granted by the Lieutenant Governor and the Lord Fairfax to the persons employed in this Disquisition The Governor's Commission seeming to exceed, and the Lord Fairfax's to fall something short of the Words in the Order of Council tho in all probability no Decision of this Matter in Virginia Cou'd have been final till it shou'd have received his Majesty's Determination

That notwithstanding this Difference in their Commissions both parties proceeded upon their Survey & the Maps returned by them respectively to this Board do agree almost in every particular as to the Course of the said Rivers as well in those parts which are disputed as in those where there is no Contest except only that Lord Fairfax's Commissioners have added a small River on theirs towards the head Spring of the South Branch of the Rappahannock which my Lord's Council have agreed to give up and to found no claim upon the Course of the little River so added

The first Gran*y* made within the Tract contended for which has been laid before us by the Lord Culpeper to Brent and others in the Year 1686, which was two years preceeding the last Patent and
2086 the first Grant made by the Government of Virginia to Mr Henry Beverly referred to above was not till the Year 1705 which gave rise to a Dispute between the Patentee and the Government of Virginia and occasioned the Survey of the two Branches of the Rappahannock River in order to know whether the North or South Branch was the larger and consequently which of those two Branches should be the Boundary of the Proprietors Grant

We find no Instance after this of any Grant made by the Government of Virginia till the Year 1717, to Mr Carter but we find two Grants from Lady Culpepper in 1709 to Philip Ludwell Esqr

There have also been some Grants made by the Government of Virginia in the Year 1717, 1718, & 1726 & also great Numbers of Grants & Surveys for Grants since the Date of his Majesty's Order in Council

Upon the whole it appears to Us that the Dispute between the Crown & Lord Fairfax turns cheifly upon the Construction of the words of the Patent upon which We have already Reported what was said by the Council on both Sides and shall submit that entirely to your Lordships Determination But whatever Boundary his Majesty shall fix to the Lord Fairfax's Grant we would recommend to your Lordship's humbly to advise his Majesty that he would be graciously pleased to Direct the Persons already seated in that District by Grants from the Government of Virginia may not be disturbed or molested—

We are My Lords

Your Lordship's most obedient & most humble Servants,

MONSON
M BLADEN
T. PELHAM
R. PLUMER

Whitehall July 27, 1739

Endorsed: Supreme Court U. S. No. 1, Original. Oct. Term, 1907. Maryland *v.* West Virginia. Filed Oct. 15, 1907. Office, Supreme Court, U. S. Filed Oct. 15, 1907. James H. McKenney, Cl'k. Price, Smith, Spilman & Clay, Att'ys at Law, Charleston, W. Va.

2087 Charters & Constitutions, United States, Part 2, Page 1888.

Virginia.

Grant to Sir Walter Raleigh—1584.

(See "North Carolina," pages 1379-1382.)

The First Charter of Virginia—1606.

James, by the Grace of God, King of England, Scotland, France and Ireland, Defender of the Faith, Etc. Whereas our loving and well-disposed Subjects, Sir Thomas Gates, and Sir George Somers, Knights, Richard Hackluit, Clerk, Prebendary of Westminster, and Edward-Maria Wingfield, Thomas Hanham, and Ralegh Gilbert, Esqrs. William Parker, and George Popham, Gentlemen, and divers others of our loving Subjects have been humble Suitors unto us, that We would vouchsafe unto them our License, to make Habitation, Plantation, and to deduce a colony of sundry of our People into that part of America commonly called Virginia and other parts and Territories in America, either appertaining unto us, or which are not now actually possessed by any Christian Prince or People, situate, lying and being all along the Sea Coasts, between four and thirty Degrees of Northerly Latitude from the Equinoctial Line, and five and forty degrees of the same Latitude, and in the main Land between the same four and thirty and five and forty degrees of the same Latitude, and in the main Land between the same four and thirty and five and

forty Degrees, and the Islands thereunto adjacent, or within one hundred Miles of the Coast thereof;

And to that End, and for the more speedy accomplishment of their said intended Plantation and Habitation there, are desirous to divide themselves into several Colonies and Companies; the one consisting of certain Knights, Gentlemen, Merchants, and other Adventurers, of our City of London and elsewhere, which are and from time to time shall be, joined unto them, which do desire to begin their
2088 Plantation and Habitation in some fit and convenient Place, between four and thirty and one and forty Degrees of the said Latitude, alongst the Coasts of Virginia, and the Coasts of America aforesaid; And the other consisting of sundry Knights, Gentlemen, Merchants and other Adventurers, of our Cities of Bristol and Exeter, and of our Town of Plimouth, and of other Places which do join themselves unto that Colony which do desire to begin their Plantation and Habitation in some fit and convenient Place, between eight and thirty degrees and five and forty degrees of the said latitude, all alongst the said Coasts of Virginia and America as that Coast lyeth:

We, greatly commending, and graciously accepting of, their Desires for the Furtherance of so noble a work, which may, by the Providence of Almighty God hereafter tend to the Glory of his Divine Majesty, in propogating of Christian Religion to such People, as yet live in Darkness and miserable Ignorance of the true Knowledge and Worship of God, and may in time bring the Infidels and Savages, living in those parts, to human Civility, and to a settled and quiet Government; Do, by these our Letters Patents, graciously accept of, and agree to, their humble and well-intended desires;

And do therefore, for Us, our Heirs and Successors, grant and agree, that the said Sir Thomas Gates, Sir George Somers, Richard Hackluit, and Edward-Maria Wingfield, Adventurers of and for our City of London, and all such others as are, or shall be, joined unto them of that Colony, shall be called the first Colony; and they shall and may begin their said first Plantation and Habitation, at any Place upon the said Coast of Virginia or America where they shall think fit and convenient, between the said four and thirty and one and forty Degrees of the said Latitude; And they shall have all the Lands, Woods, Soil, Grounds, Havens, Ports, Rivers, Mines, Minerals, Marshes, Waters, Fishings, Commodities and Hereditaments, whatsoever, from the said first Seat of their Plantation
2089 and Habitation by the Space of fifty Miles of English Statute Measure, all along the said Coast of Virginia and America, towards the West and Southwest, as the Coast lyeth, with all the Islands within one hundred Miles directly over against the same Sea Coast; And also all the Lands, Soil, Grounds, Havens, Ports, Rivers, Mines, Minerals, Woods, Waters, Marshes, Fishings, Commodities and Hereditaments, whatsoever, from the said Place of their first Plantation and Habitation for the space of fifty like English Miles, all alongst the said Coasts of Virginia and America, towards the East and Northeast, or towards the North as the Coast lyeth, together with all the Islands within one hundred Miles, directly over against the said Sea Coast; And also all the Lands, Woods, Soil, Grounds, Ha-

vens, Ports, Rivers, Mines, Minerals, Marshes, Waters, Fishings, Commodities and Hereditaments, whatsoever, from the same fifty Miles everyway on the Sea Coast directly into the main Land by the space of one hundred like English Miles; And shall and may inhabit and remain there; and shall and may also build and fortify within any the same, for their better Safeguard and defence according to their best Discretion, and the Discretion of the Council of that Colony; And that no other of our Subjects shall be permitted or suffered, to plant or inhabit behind, or on the Backside, towards the Main Land, without the Express License or Consent of the Council of that Colony thereunto in Writing first had and obtained.

And we do likewise, for Us, our Heirs, and Successors, by these presents, Grant and agree, that the said Thomas Hanham, and Ralegh Gilbert, William Parker, and George Popham, and all others of the Town of Plimouth in the County of Devon, or elsewhere, which are, or shall be, joined unto them of that Colony, shall be called the second Colony; And that they shall and may begin their
2090 said Plantation and Seat of their first Abode and Habitation, at any Place upon the said Coast of Virginia and America, where they shall think fit and convenient, between eight and thirty Degrees of the said Latitude, and five and forty Degrees of the same Latitude: And that they shall have all the Lands, Soils, Grounds, Havens, Ports, Rivers, Mines, Minerals, Woods, Marshes, Waters, Fishings, Commodities and Hereditaments, whatsoever, from the first Seat of their Plantation and Habitation, by the space of Fifty like English Miles, as is aforesaid, all alongst the said Coasts of Virginia and America, towards the West and Southwest, or towards the South, as the Coast lyeth, and all the Islands within one hundred Miles, directly over against the said Sea Coast; And also the Lands, Soils, Grounds, Havens, Ports, Rivers, Mines, Minerals, Woods, Marshes, Waters, Fishings, Commodities and Hereditaments, whatsoever, from the said place of their first Plantation and Habitation for the Space of fifty like Miles, all alongst the said Coast of Virginia and America, towards the East and Northeast or towards the North as the Coast lyeth, and all the Islands also within one hundred Miles directly over against the same Sea Coast; And also all the Lands, Soils, Grounds, Havens, Ports, Rivers, Woods, Mines, Minerals, Marshes, Waters, Fishings, Commodities and Hereditaments, whatsoever, from the same fifty Miles every way on the Sea Coast, directly into the main Land, by the Space of one hundred like English Miles; And shall and may inhabit and remain there; and shall and may also build and fortify within any the same for their better Safeguard, according to their best Discretion, and the Discretion of the Council of that Colony; And that none of our Subjects shall be permitted or suffered, to plant or inhabit behind, or on the back of them, towards the main Land without express License of the Council of that
2091 Colony, in writing thereunto first had and obtained.

Provided always, and our Will and Pleasure herein is, that the Plantation and Habitation of such of the said Colonies as shall last plant themselves, as aforesaid, shall not be made within one hun-

dred like English Miles of the other of them, that first began to make their Plantation as aforesaid.

And we do also ordain, establish and agree for Us, our Heirs, and Successors, that each of the said Colonies shall have a Council which shall govern and order all matters and Causes which shall arise, grow or happen, to or within the same several Colonies, according to such Laws, Ordinances, and Instructions as shall be in that behalf, given and signed with Our Hand or Sign Manual, and pass under the Privy Seal of our Realm of England; Each of which Councils shall consists of thirteen Persons to be ordained, made, and removed from time to time, according as shall be directed and comprised in the same instructions; And shall have a several Seal, for all Matters that shall pass or concern the same several Councils; Each of which Seals shall have the King's Arms engraven on the one Side thereof, and his Portraiture on the other; And that the Seal for the Council of the said First Colony shall have engraven round about, on the one Side, these words: *Sigillum Regis Magnae Britanniae, Franciae, & Hiberniae;* on the other Side this Inscriptions round about; *Pro Concilio Primae Coloniae Virginiae.* And the Seal for the Council of the said second Colony shall also have engraven round about the one side thereof, the aforesaid Words; *Sigillum Regis Magnae Britanniae, Franciae, & Hiberniae;* and on the other Side; *Pro Concilio secundae Colonial Virginiae:*

And that also there shall be a Council established here in England, which shall, in like Manner, consist of thirteen Persons, to be,
2092 for that purpose, appointed by Us, our Heirs and Successors, which shall be called our Council of Virginia; and shall, from time to time, have the superior Managing and Direction, only of and for all Matters that shall or may concern the Government, as well of the said several Colonies as of and for any other Part or Place, within the aforesaid Precincts of four and thirty and five and forty Degrees abovementioned; Which Council shall, in like manner, have a Seal for Matters concerning the Council or Colonies, with the like Arms and Portraiture, as aforesaid, with this inscription engraven round about on the one Side; *Sigillum Regis Magnae Britanniae, Franciae, & Hiberniae;* and round about on the other side, *Pro Concilio fuo Virginiae.*

Endorsed: Supreme Court U. S. No. 1 Original, Oct. Term 1907. Maryland *v.* West Virginia.
Office Supreme Court N. S. Filed Oct. 15 1907 James H. McKenney, Clerk.

2093 Charters and Constitutions, The United States, Part 2, Page 1893.

The Second Charter of Virginia—1609.

James, by the Grace of God, King of England, Scotland, France and Ireland, Defender of the Faith, &c. To all, to whom these presents shall come, Greeting. Whereas, at the humble Suit and Request of sundry our loving and well-disposed Subjects, intending

to deduce a Colony, and to make Habitation and Plantation of sundry our People in that Part of America commonly called Virginia, and other Parts and Territories in America, either appertaining unto Us, or which are not actually possessed of any Christian Prince or People, within certain Bounds and Regions, We have formerly, by our Letters Patents, bearing Date the tenth Day of April, in the fourth year of our Reign of England, France, and Ireland, and of Scotland the nine and thirtieth, Granted to Sir Thomas Gates, Sir George Somers, and others, for the more speedy Accomplishment of the said Plantation and Habitation, that they should divide themselves into two Colonies (the one consisting of divers Knights, Gentlemen, Merchants, and others, of our City of London, called the First Colony; And the other consisting of divers Knights, Gentlemen, and others, of our Cities, Bristol, Exeter, and Town of Plimouth, and other Places, called the Second Colony.) And have yielded and granted many and sundry Privileges and Liberties to each Colony for their quiet settling and good Government therein, as by the said Letters-patents more at large appeareth.

Now, forasmuch as divers and sundry of our loving Subjects as well Adventurers, as Planters of the said first Colony, which have already engaged themselves in furthering the business of the said Colony and Plantation, and do further intend, by the Assistance of Almighty God, to prosecute the same to a happy End, have
2094 of late been humble Suitors unto Us, that (in Respect of their great Charges and the Adventure of many of their Lives, which they have hazarded in the said Discovery and Plantation of the said Country.) We would be pleased to grant them a further Enlargement and Explanation of the said Grant, Privileges, and Liberties, and that such Councellors, and other Officers, may be appointed amongst them, to manage and direct their affairs, as are willing and ready to adventure with them as also whose Dwellings are not so far remote from the City of London, but they may at convenient Times be ready at Hand, to give their Advice and Assistance, upon all Occasions requisite.

We greatly affecting the effectual Prosecution and happy success of the said Plantation, and commending their good desires therein, for their further Encouragement in accomplishing so excellent a Work, much pleasing to God and profitable to our King, do of our especial Grace, and certain knowledge, and mere motion, for Us, our Heirs, and Successors, Give, Grant, and Confirm, to our trusty and well beloved Subjects, Robert, Earl of Salisbury, Thomas, Earl of Suffolk, * * * and to such and so many as they do, or shall hereafter admit to be joined with them, in the form hereafter in these presents expressed, whether they go in their Persons to be Planters there in the said Plantation, or whether they go not, but Adventure their monies, goods, or Chattles, that they shall be one Body or Commonalty perpetual, and shall have perpetual Succession, and one common Seal to serve for the said Body or Commonalty, and that they and their Successors shall be known, called, and incorporated by the Name of The Treasurer and Company of Adventurers and Planters of the City of London, for the first Colony in

Virginia. And that they and their Successors shall be from henceforth forever enabled to take, acquire, and purchase by the name aforesaid (Licence for the same from Us, our Heirs, and
2095 Successors, first had and obtained) and Manner of Lands, Tenements, and Hereditaments, Goods, and Chattles, within our Relm of England and Dominion of Wales. And that they, and their Successors shall likewise be enabled by the Name aforesaid, to plead and be impleaded, before any of our Judges or Justices in any of our Courts, and in any Actions or Suits whatsoever. And we do also of our special Grace, certain Knowledge, and mere Motion, give, grant and confirm, unto the said Treasurer and Company, and their Successors, under the Reservations, Limitations, and Declarations hereafter expressed, all those Lands, Countries, and Territories, situate, lying, and being in that Part of America, called Virginia, from the Point of Land, called Cape or Point Comfort, all along the Sea Coast to the Northward, two hundred miles, and from the said Point of Cape Comfort, all along the Sea Coast to the Southward two hundred Miles, and all that Space and Circuit of Land lying from the Sea Coast of the Precinct aforesaid, up into the Land throughout from Sea to Sea, West and Northwest: And also all the Islands lying within one hundred Miles along the Coast of both Seas of the Precinct aforesaid: Together with all the Soils, Grounds, Havens, and Ports, Mines, as well Royal Mines of Gold and Silver, as other Minerals, Pearls and Precious Stones, Quarries, Woods, Rivers, Waters, Fishings, Commodities, Jurisdictions, Royalties, Privileges, Franchises, and Preheminences within the said Territories, and the Precincts thereof, whatsoever, and thereto, and thereabouts both by Sea and Land, being, or in any sort belonging or appertaining, and which We, by our Letters Patents, may or can grant, in as ample Manner and Sort, as We, or any our noble Progenitors, have heretofore granted to any Company, Body Politic or Corporate, or to any Adventurer or Adventurers, Undertaker or Undertakers of any Discoveries, Plantations, or Traffic, of, in, or unto any Foreign
2096 Parts whatsoever, and in as large and ample Manner, as if the same were herein particularly mentioned and expressed; to have and to hold, possess and enjoy, all and singular the said Lands, Countries and Territories, with all and singular other the Premises heretofore by these Presents granted, or mentioned to be granted to them, the said Treasurer and Company, their Successors and Assigns forever; To the sole and proper use of them, the said Treasurer and Company, their Successors and Assigns forever; to be holden of Us, our Heirs and Successors, as of our Manner of East-Greenwich, in free and common Soccage, and not in Capite; yielding and paying therefore, to Us, our Heirs and Successors, the fifth Part only of all Ore of Gold and Silver, that from Time to Time, and at all Times hereafter, shall be there gotten, had, or obtained, for all Manner of Services.

Endorsed: Supreme Court U. S. No. 1 Original, Oct. Term 1907 Maryland *v.* West Virginia.

Office Supreme Court U. S. Filed Oct 15 1907 James H. McKenney Clerk.

2097 Charters and Constitutions, The United States, Part 2. Page 1902.

The Third Charter of Virginia—1611-'12.

James, by the Grace of God, King of England, Scotland, France, and Ireland, Defender of the Faith; To all to whom these Presents shall come, Greeting. Whereas at the humble Suit of divers and sundry of our loving Subjects, as well Adventurers as Planters of the first Colony in Virginia, and for the Propogation of Christian Religion, and Reclaiming of People barbarous, to Civility and Humanity, we have, by our Letters-Patents, bearing Date at Westminster, the three-and twentieth Day of May, in the seventh Year of our Reign of England, France, and Ireland, and the two-and-fortieth of Scotland, Given and Granted unto them that they and all such and so many of our loving Subjects as should from time to time, for ever after, be joined with them as Planters or Adventurers in the said Plantation, and their Successors forever, should be one Body politick, incorporated by the Name of The Treasurer and Company of Adventurers and Planters of the City of London for the first Colony in Virginia; And whereas also for the greater Good and Benefit of the said Company, and for the better Furtherance, Strengthening, and Establishing of the said Plantation, we did further Give, Grant and Confirm, by our Letters-patents unto the said Company and their Successors, forever, all those Lands, Countries or Territories, situate, lying and being in that Part of America called Virginia, from the Point of Land called Cape or Point Comfort all along the Sea Coasts to the Northward two hundred Miles; and from the said Point of Cape Comfort all along the Sea Coast to the Southward two hundred Miles; and all that Space and Circuit of Land lying from the Sea Coast of the Precinct aforesaid, up into the Land throughout from Sea to Sea West and North-west; and also all the Islands
2098 lying within one hundred Miles along the Coast of both the Seas of the precinct aforesaid; with divers other Grants, Liberties, Franchises and Preheminences, Privileges, Profits, Benefits, and Commodities granted in and by our said Letters-patents to the said Treasurer and Company and their Successors forever. Now forasmuch as we are given to understand, that in those Seas adjoining to the said Coasts of Virginia, and without the Compass of those two hundred miles by Us so granted unto the said Treasurer and Company as aforesaid, and yet not far distant from the said Colony in Virginia, there are or may be divers Islands lying desolate and uninhabited, some of which are already made known and discovered by the Industry, Travel, and Expences of the said Company, and others also are supposed to be and remain as yet unknown and undiscovered, all and every of which it may import the said Colony both in Safety and Policy of Trade to populate and plant; in Regard whereof, as well for the preventing of Peril, as for the better Commodity of the said Colony, they have been humble suitors unto Us, that We would be pleased to grant unto them an enlargement of our said former Letters-patents, as well for a more ample Extent of their

Limits and Territories into the Seas adjoining to and upon the Coast of Virginia, as also for some other Matters and Articles concerning the better government of the said Company and Colony, in which Point our said former Letters-Patents do not extend so far as Time and Experience hath found to be needful and convenient: We therefore tendering the good and happy Success of the said Plantation, both in regard of the General Weal of human Society, as in Respect of the Good of our own Estate and Kingdoms, and being willing to give Furtherance unto all good Means that may advance the Benefit of the said Company, and which may secure the Safety of our loving Subjects planted in our said Colony, under the Favour and
2099 protection of God Almighty, and of our Royal Power and Authority, have therefore of our especial Grace, certain Knowledge, and mere Motion, given, granted, and confirmed, and for Us, our Heirs and Successors, we do by these Presents give, grant, and confirm to the said Treasurer and Company of Adventurers and Planters of the city of London for the first Colony in Virginia, and to their Heirs and Successors for ever, all and singular those Islands whatsoever situate and being in any Part of the Ocean Seas bordering upon the Coast of our said first Colony in Virginia, and being within three Hundred Leagues of any of the parts heretofore granted to the said Treasurer and Company in our said former Letters-Patents as aforesaid, and being within or between one-and-fortieth and thirtieth Degrees of Northerly latitude; together with all and singular Soils, Lands, Grounds, Havens, Ports, Rivers, Waters, Fishings, Mines and Minerals, as well Royal Mines of Gold and Silver, as other Mines and Minerals, Pearls, Precious Stones, Quarries, and all and singular other Commodities, Jurisdictions, Royalties, Privileges, Franchises and Preheminences, both within the said Tract of Land upon the Main, and also within the said Islands and Seas adjoining whatsoever and thereunto or thereabouts, both by Sea and Land being or situate; and which, by our Letters-Patents we may or can grant, and in as ample Manner as We or any our noble Progenitors have heretofore granted to any Person or Persons, or to any Company, Body Politick or corporate, or to any Adventurer or Adventurers, Undertaker or Undertakers of any Discoveries, Plantations, or Traffick, of, in, or into any foreign Parts whatsoever, and in as large and ample Manner as if the same were herein particularly named, mentioned, and expressed. Provided always, that the said Islands or any Premises herein mentioned, or by these Presents intended or meant to be granted, be not actually possessed or inhabited by
2100 any other Christian Prince or Estate, nor be within the Bounds, Limits, or Territories of the Northern Colony heretofore by Us granted to be planted by divers of our loving Subjects in the North Parts of Virginia.

Endorsed: Supreme Court U. S. No. 1 Original, Oct. Term 1907. Maryland *v.* West Virginia.

Office Supreme Court U. S. Filed Oct. 15 1907. James H. McKenney, Clerk.

2101 (From "Narrative and Critical History of America," Vol. V, p. 276.)

By Justin Winsor.

Another question of bounds in Virginia, which it took some time to settle, was the western limits of the northern neck, as the wedge-like tract of territory was called which lay between the Rappahannock and the Potomac. It had been granted by Charles II. to Lord Hopton and others, but when bought by Lord Thomas Culpepper a new royal grant of it was made to him in 1688*. It passed as a dower with Culpepper's daughter Catharine to Thomas, Lord Fairfax, and from him it passed to the sixth Lord, Thomas, who petitioned (1733) the king to have commissioners appointed to run the line between the rivers. Of this commission was William Byrd, and an account of their proceedings is given in the second volume of the Byrd Manuscripts (p. 83) as edited by Wynne. A map of the tract was made at this time, which was called The Courses of the Rivers Rappahannock and Potowmack in Virginia, as surveyed according to order in the year 1736–1737. The bounds established by this commission were not confirmed by the king till 1745, and other commissioners were appointed the next year to run the line in question. The original journal of the expedition for this purpose, kept by Maj. Thomas Lewis, is now in the possession of John F. Lewis, lieutenant-governor of Virginia†. The plate of the map already referred to was corrected to conform, and this additional title to it was added: A Survey of the Northern Neck of Virginia, being the lands belonging to the Rt. Honourable Thomas Lord Fairfax, Baron Cameron, bounded by and within the Bay of Chesapoyocke, and between the Rivers Rappahannock and Potowmack. Along the line which is dotted to connect the head-spring of the southern branch of the Rappahannock with the head-spring of the Potomac is a
2102 legend, noting that it was determined by the king in council, April 11, 1745, that this line should be the westerly limit of the Fairfax domain. A section of the second state of the plate of this map is annexed in *fac-simile* from a copy in Harvard College library‡.

Notes.

* Grant of the Northern Neck in Virginia to Lord Culpepper by James II. in Harvard College library.

† Spotswood Letters, i, 152.

‡ This grant, from conflicting interests, has been the subject of much later litigation. Cf. Kercheval's History of the Valley, 2d ed., 1850, pp. 138-152. Cf. on the boundary disputes between Pennsylvania and Virginia, Mag. of Amer. Hist., Feb., 1885, p. 154.

Endorsed: Supreme Court U. S. No. 1 Original, Oct Term 1907. Maryland *v.* West Virginia Filed Oct. 15 1907. Office Supreme Court U. S. Filed Oct. 15 1907. James H. McKenney, Clerk.

2103 Revised Code of 1819, Vol. 1, Chapter 89, Pages 343, 344, 345, 346, 347, 348, and 349.

An act for confirming and better securing the titles to lands in the Northern Neck, held under the right honorable Thomas Lord Fairfax, Baron of Cameron, in that part of Great Britain, called Scotland.

(Passed in 1736.)

1. Whereas the late King Charles II by certain letters patent, under the great seal of England, bearing date at Westminster, the eighth day of May, in the one and twentieth year of his reign, reciting, that he, taking into his royal consideration the propogation of the christian faith, and the manifold benefits arising to the church of God, together with the welfare of multitudes of his loyal subjects, by the undertaking and vigorous prosecution of plantations of foreign parts, and particularly in his dominions of America, by his letters patent, under the great seal of England, bearing date at St. Germains en Ley, the eighteenth day of September, in the first year of his reign, for the consideration therein expressed, had given, granted, and confirmed, unto Ralph Lord Hopton, Henry Earl of St. Alban's, by the then name of Henry Lord Jermyn, John Lord Culpeper, John Lord Berkeley, of Stratton, by the then name of Sir John Berkeley, Sir William Morton, one of the justices of his court of King's Bench, by the then name of Sir William Morton, Sir Dudley Wyatt, and Thomas Culpeper, their heirs and assigns for ever, all that entire tract, territory, or parcel of land, situate, lying, and being in America, and bounded within the heads of the rivers Rappa-

2104 hannock and Quiriough or Potomac river, the courses of the said rivers, as they are commonly called and known by the inhabitants, and descriptions of those parts, and Chesapeake bay, together with the rivers themselves, and all the Islands within the Banks of those rivers, and all woods, under woods, timber, and trees, ways, waters, and rivers, ponds, pools, water courses, fishings, streams, havens, ports, harbours, creeks, wrecks of sea, fish royal, deer, wild beasts, and fowl, of what nature and kind soever, mines of gold and silver, lead, tin, iron, and copper, and quarries of stone and coal, which then were, or at any time thereafter should be had, coming, being, and arising, renewing, accruing, found, or taken, within the bounds or precincts aforesaid, together with the royalty of hawking and hunting, for themselves, their heirs, and assigns, servants, and tenants, in and upon the lands and premises aforesaid; saving and reserving to him, his heirs and successors, one full fifth part of all gold mines, or gold ore, and one full tenth part of all silver mines, or silver ore, thereafter to be found within the said tract or territory of land, to have, hold, and enjoy, all the said entire tract, territory, or portion of land, and all and singular other the premises, with their and every of their appurtenances, thereby granted or mentioned, or intended to be granted (except as before is excepted) to the said Ralph Lord Hopton, Henry then Lord Jermyn, now Earl of St. Alban's, John Lord Culpeper, Sir John Berkeley, now Lord

Berkeley, of Stratton, Sir William Morton, Sir Dudley Wyatt, and Thomas Culpeper, their heirs, and assigns for ever, to their only use and behoof, and to no other use, intent, or purpose, whatsoever; yielding and paying therefore, yearly at the feast of St. John the baptist, to his said majesty, his heirs, and successors, the sum of six pounds thirteen shillings and four pence, at the receipt of Jamestown, in the dominion of Virginia, in lieu of all services
2105 and demands whatsoever: reciting also that the said Ralph Lord Hopton, John Lord Culpeper, Sir Dudley Wyatt, and Thomas Culpeper, being dead, and the said Lord Hopton having sold his estate and interest in the premises to John Tretheway, Esq. the said tract, territory, or parcel of land, and all and singular other the premises, had been surrendered, together with the said letters patent, to be cancelled to the intent that his said late majesty might grant them new letters patent thereof, with such alterations, provisos, and clauses, as therein after is expressed, he the said late King, in consideration of the said surrender, and for and in consideration of the many and faithful services done to his late royal father, of blessed memory, and to himself, by the said Henry Earl of St Alban's, John Lord Berkeley, Sir William Morton, and John Trethewey, Esq., and for divers other good causes and considerations him thereunto especially moving, of his especial grace, certain knowledge, and mere motion, did give, grant, and confirm, unto the said Henry Earl of St Alban's, John Lord Berkeley, Sir William Morton, and John Trethewey, their heirs, and assigns for ever, all that entire tract, territory, or parcel of land, situate, lying, and being in America, and bounded by and within the head of the rivers Tappahannock alias Rappahannock, and Quiriough alias Potomac rivers, the courses of the said rivers, as they are commonly called and known by the inhabitants and descriptions of those parts, and Chesapeake bay, together, with the rivers themselves, and all the islands within the banks of those rivers, and all woods, under woods, timber, and trees, ways, waters, rivers, ponds pools, water courses, fishings, streams, havens, ports, harbours, creeks, wrecks of sea, fish royal, deer, wild beast and fowl of what nature and kind soever, mines of gold and silver, lead, tin, iron, and copper, and quarries of stone and coal, which then were, or at any time thereafter should be had,
2106 coming, being, arising, renewing, accruing, found or taken, within the bounds or precincts aforesaid, together with the royalties of hawking and hunting, for themselves, their heirs and assigns, servants and tenants, in and upon the land and premises aforesaid, and in and upon every part and parcel thereof; saving, excepting, and reserving, to his said late majesty, his heirs, and successors, one full fifth part of the whole, in five parts to be divided, of all gold mines, or gold ore, one full tenth part of all silver mines, and silver ore, thereafter to be had or found within the said tract or territory of land; to have, hold, and enjoy, all the said entire tract, territory, or portion of land, and all and singular other the premises, with their and every of their appurtenances, thereby granted or mentioned, or intended to be granted (except as before is excepted) to the said Henry Earl of St. Alban's, John Lord Berke-

ley, Sir William Morton, and John Trethewey, their heirs, and assigns for ever, to their only use and behoof, and to no other use, intent, or purpose, whatsoever; yielding and paying therefore, yearly, at the feast of St. John the baptist, to his said late majesty, his heirs, and successors, the sum of six pounds thirteen shillings and four pence, at the receipt of Jamestown in Virginia, in lieu of all services and demands whatsoever; with power to divide the said tract or territory of land into counties, hundreds, parishes, tithings, townships, hamlets, and boroughs, and to erect and build cities, towns parish churches, colleges, chapels, free schools, alms houses, and houses of correction, and to endow the same, at their free wills and pleasures; and did appoint them full and perpetual patrons of all such churches so to be built and endowed, with power of electing, nominating, and presenting, any fit person to the office and place of master of any college, or schoolmaster of any school, so to be
2107 founded and endowed; with power also to divide any part or parcels of the said tract or territory, or portion of lands, into manors, and to call the same after their own or any of their names, or by other name or names whatsoever, and within the same to hold a court, in the nature of a court baron, and to hold pleas of all actions, trespasses, covenants, accounts, contracts, detinues, debts, and demands whatsoever, where the debt or thing demanded exceed not the value of forty shillings of current money of England, and to receive and take all amerciaments, fines, commodities, advantages, perquisites, and emoluments whatsoever, to such respective court barons belonging, or in any wise appertaining: And further, to hold within the said manors a court leet, and view of frank pledge, of all the tenants, residents, and inhabitants, of the hundreds within such respective manors, to be holden twice in every year, and to erect fairs, markets, courts of pipowder, with all things incident thereto; and to erect parks for breeding, feeding and sustentation of deer, and other wild beasts of chase: And further, the said late King, by the said charter, for himself, his heirs, and successors, did grant and give license to the said Henry Earl of St. Alban's, John Lord Berkeley, Sir William Morton, and John Trethewey, their heirs, and assigns, freely, and without molestation to him, his heirs, and successors, to give, grant, or by any ways or means sell or alien, all and singular the premises by these presents granted, and every part and parcel thereof, to any person or persons being willing to contract for or buy the same: to be holden of the said Henry Earl of St. Alban's, John Lord Berkeley, Sir William Morton, and John Trethewey, their heirs and assigns, as of any of their aforesaid manors, in free and common socage, by fealty only, and by suit of court, or by any other lawful tenure or terms used within the kingdom of England; rendering and paying such rents, and other
2108 lawful reservations, as shall seem fit and convenient to the said Henry Earl of St. Alban's, John Lord Berkeley Sir William Morton, and John Trethewey, their heirs, and assigns, notwithstanding the statute commonly called *quia emptores terrarum*, or any other statute, act, or ordinance, or provision, or any other thing, cause, or matter whatsoever, to the contrary notwithstanding:

And further, the said late King, for himself, his heirs, and successors, did grant to the said patentees, their heirs, executors, and assigns, to enlarge and confirm the said Letters patent, by granting to them and their heirs other new ones, with such favourable concessions and grants as might supply any defects therein contained; with this proviso nevertheless, that the said letters patent, or any thing therein contained, should not extend, or be construed to extend, to infringe, make void, or other ways prejudice, any contract or contracts, grant or grants whatsoever, theretofore made or granted by the Governor and Council of Virginia unto any planters, or other inhabitants, then in the actual possession thereof, by virtue of any such grants made before the nine and twentieth day of September, in the thirteenth year of his reign; but if any part of such lands so granted should escheat, or be otherwise forfeited, then the said patentees, their heirs, and assigns, might dispose thereof, for their best benefit and advantage, at their own free wills and pleasures; with this proviso also, that so much of the said granted premises, as within the time and space of one and twenty years then next following, should not be possessed, inhabited, or planted, by the means or procurement of the said patentees, their heirs, or assigns, that then the said letters patent should cease, determine, and become void; and lastly, with this further proviso, that the said patentees, their heirs and assigns, should not act or intermeddle in the military affairs or forces of or within the said tract of land and premises thereby
2109 granted, or any part thereof, or with the government or command of any of the castles, forts, or fortifications thereof, without the order, authority, or command, of the Governor and council of Virginia for the time being, or such other person or persons as his said late majesty, his heirs, or successors, should think fit to dispose the same; and that the Governor, Council and Assembly of Virginia, for the time being, should have full power and authority to impose and lay any taxes and impositions upon the said territories thereby granted, and all the lands and premises thereby meant and intended to be granted, and all and every the possessors, or inhabitants thereof, for the public and common defence of the said colony of Virginia, and the territory and lands thereby granted, as upon other parts of Virginia, proportionably, when and as often as the necessity of the said colony should require the same for the common good; and that the said patentees, their heirs, and assigns, and other inhabitants of or in the premises, should be in all things subject and obedient to such laws and constitutions as were or should be made by the said Governor, Council, and Assembly, for or concerning the said colony, or the government thereof, any thing therein before contained to the contrary notwithstanding, as in the said letters patent more fully is contained.

2. And, whereas the late King James II by other letters patent, under the great seal of England, bearing date at Westminster the seven and twentieth day of September, in the fourth year of his reign, reciting the above recited letters patents, and that the said former patentees, their heirs, and assigns, had, by good and sufficient conveyance and assurance in the law, for valuable considerations,

sold, conveyed, and assured, the said whole tract, territory, and portion of land, and all and singular the premises, and every
2110 part and parcel thereof, and all their estate, right, title, and interest therein, together with the said letters patents, unto Thomas Lord Culpeper, eldest son and heir of John late Lord Culpeper, deceased, his heirs, and assigns, for ever, who was thereby become sole owner and proprietor thereof, in fee simple, for the considerations therein mentioned, did give, grant, and confirm, unto the said Thomas Lord Culpeper, all that entire tract, territory, or parcel of land, situate, lying, and being in Virginia, in America, and bounded by and within the first heads or springs of the rivers of Tappahannock (alias Rappahannock,) and Quiriough (alias Potowmac) rivers, the courses of the said rivers, from their said first heads or springs, as they were commonly called and known by the inhabitants, and descriptions of those parts, and the bay of Chesapeake, together with the said rivers themselves, and all the islands within the uttermost banks thereof, and the soil of all and singular the premises, and all lands woods, under woods, timber, and trees, ways, mountains, swamps, marshes, waters, rivers, ponds, pools, lakes, water courses, fishings, streams, havens, ports, harbours, bays, creeks, ferries, with all sorts of fish, as well whales, sturgeons, and other royal fishes, as all others whatsoever, wrecks of sea, Floatson, Jetson, and Lagan, and all sorts of deer, wild beasts, and fowl, of what nature or kind soever, and all manner of deodands, goods of felons and fugitives, treasures trove, waifs, strays, fines, forfeitures, escheats, advowsons, royalties, and hereditaments whatsoever, with all mines of gold and silver, lead, tin, iron, and copper, and all quarries of stone and coal, within the limits and precincts aforesaid, which then were, or at any time thereafter should be had, coming, being, arising, growing, renewing, accruing, found, or taken, within the bounds, limits, precincts, or places aforesaid; saving, excepting, and reserving to his said late majesty, his heirs, and successors, one full
2111 fifth part of all gold mines, or gold ore, and one full tenth part of all silver mines, and silver ore, then being, or which thereafter should be had or found, within the said tract or territory of land; to have, hold, and enjoy, all the said entire tract territory, or portion of land, and every part and parcel thereof, and all and singular other the premises, with their and every of their appurtenances, thereby granted or mentioned, or intended to be granted (except as before is excepted) to the said Thomas Lord Culpeper, his heirs, and assigns, for ever, to his and their only use and behoof,, and to no other use, intent, or purpose whatsoever; yielding and paying therefor, yearly, from thenceforth, on the feast of St. John the baptist, to his said late majesty, his heirs, and successors, the sum of six pounds thirteen shillings and four pence, at the receipt of Jamestown, in the colony of Virginia, in lieu of all services and demands whatsoever: the first payment to be made on the feast day of St. John the baptist next ensuing the date of the said letters patent; And his said late majesty did thereby, for himself, his heirs, and successors, further give, grant, ratify, and confirm, to the said Thomas Lord Culpeper, his heirs, and assigns, for ever, all and sin-

gular the grants, powers, authorities, privileges, licenses, and clauses, in the said herein-before recited letters patents mentioned, granted, or conveyed, in as large and ample manner, to all intents and purposes whatsoever, as if the same, and every of them, had been particularly granted and expressed in these his letters patent, except only the above-mentioned proviso; and his late majesty did further, of his especial grace, certain knowledge, and mere motion, for himself, his heirs, and successors, fully and absolutely, for ever, release and discharge the said abovementioned proviso, and every part thereof, and every matter and thing therein contained, in as
2112 large and ample manner, to all intents and purposes whatsoever, as if the same had never been made, thereby declaring the same to be null and void, and the said Thomas Lord Culpeper, his heirs, and assigns, and the tract, territory, and premises, and every part thereof, to be for ever freed, cleared and discharged, from the same, so and in such manner that the said Thomas Lord Culpeper, his heirs, and assigns, might freely and absolutely enter into, have, hold, occupy, possess, and enjoy, the said tract, territory, and all and singular other the premises, freed and discharged of the said proviso, and all right, title, and equity, thereupon to be had, in as large, ample, and beneficial manner, to all intents and purposes, as if the same proviso had been never had or made, any thing in the said recited letters patent, or any thing therein, or in the last mentioned letters patent, to the contrary thereof, in any wise notwithstanding, as in the said last recited letters patent more is fully contained.

3. And whereas the right honorable Thomas Lord Fairfax, baron of Cameron, in that part of Great Britain, called Scotland, heir at law to the said Thomas Lord Culpeper, is now become sole proprietor of the said territory, with the appurtenances, and the above recited letters patents; and whereas divers great quantities of land have been granted to adventurers and planters within the said territory, in fee simple, by the agents and attornies of the said Lord Fairfax, and his predecessors, former proprietors of the said territory, and letters patents, by virtue of divers letters of attorney, from time to time, by them respectively given and granted to their said attornies and agents, but now of late, after long possessions and great and valuable improvements made upon the said lands by such grantees, questions are like to arise between them and the said present proprietor, touching the validity of such grants, as well in re-
2113 spect to a construction set up and maintained, of the said letters of attorney, that the powers therein contained were not full and sufficient to enable and warrant the said agents and attornies to pass away estates in fee simple, as in respect of the said Lord proprietor's estate in the premises, the same being now held by him as tenant in taille, under the will or wills of some of his ancestors, whereby the minds of many of his majesty's good subjects, possessors of lands and tenements within the said territory, are greatly disquieted, and many controversies and expensive law-suits may probably ensue: For the prevention whereof, and for settling peace between his Lordship and his said tenants,

4. Be it enacted by the Lieutenant Governor, Council and Bur-

gesses of this present General Assembly, and it is hereby enacted by the authority of the same, That, from henceforth all and every grant and grants, heretofore duly and regularly made and passed, by any of the agents or attornies of the proprietors of the said territory, or any of them, shall be good, available, and binding in law, to pass such estate or estates as therein have been granted: and the grantees, their heirs and assigns, respectively shall forever hereafter, peaceably and quietly have, hold and enjoy the same granted premises, according to such granted estates, under the rents and services by the said grants reserved, notwithstanding the infancy, coverture, or any misprision or mistake of the names, dignity or title of the said proprietors, or either of them, or any misrecital, omission or defect, in the said grant or grants, or any of them, so as the same have been made and signed by the agents or attornies of the said proprietors, or the husband, guardian or guardians, trustee or trustees, of any of them, and passed under the common seal of
2114 the office kept by them for that purpose.

Endorsed: Supreme Court U. S. No. 1 Original, Oct. Term 1907. Maryland *v.* West Virginia.
Office Supreme Court U. S. Filed Oct. 15 1907. James H. McKenney, Clerk.

2115 Revised Code, Chapter 3, Pages, 5, 6, 7, 8, & 9.

At a General Assembly summoned to be held at the Capitol, in the City of Williamsburg, on the 1st Day of August, in the 9th Year of the Reign of George the Second, of Great Britain, France, and Ireland, King, Defender of the Faith, &c. and from thence continued by several Prorogations to the 5th Day of August, in the 10th Year of his said Majesty's Reign, and in the Year of our Lord 1736.

Chap. III.

An Act for confirming and better securing the Titles to Lands in the Northern Neck, held under the Right Honourable Thomas Lord Fairfax, Baron of Cameron, in that part of Great-Britain, called Scotland.

I. Whereas the late King Charles II. by certain letters patent under the great seal of England, bearing date at Westminster, the eighth day of May, in the one and twentieth year of his reign, reciting, that he, taking into his royal consideration the propagation of the Christian faith, and the manifold benefits arising to the church of God, together with the welfare of multitudes of his loyal subjects by the undertaking and vigorous prosecution of plantations of foreign parts, and particularly in his dominions of America, by his letters patent, under the great seal of England, bearing date at St. Germains en Ley, the eighteenth day of September, in the first year of his reign, for the consideration therein expressed, had given, granted, and confirmed, unto Ralph Lord Hopton, Henry Earl of St. Alban's, by the then name of Henry Lord Jermyn, John Lord Cul-

peper, John Lord Berkeley, of Stratton, by the then name of
2116 Sir John Berkeley Sir William Morton, one of the Justices of his court of King's Bench, by the then name of Sir William Morton, Sir Dudley Wyatt, and Thomas Culpeper, their heirs and assigns, forever, all that entire tract, territory, or parcel of land, situate, lying, and being in America, and bounded within the heads of the rivers Rappahannock and Quiriough, or Potowmac river, the courses of the said rivers, as they are commonly called and known by the inhabitants, and descriptions of those parts, and Chesapeake bay, together with the rivers themselves, and all the islands within the banks of those rivers, and all woods, under woods, timber, and trees, ways, waters, and rivers, ponds, pools, water courses, fishings, streams, havens, ports, harbours, creeks, wrecks of sea, fish royal, deer, wild beasts, and fowls, of what nature and kind soever, mines of gold and silver, lead, tin, iron, and copper, and quarries of stone and coal, which then were, or at any time thereafter should be had, coming, being, and arising, renewing, accruing, found, or taken, within the bounds or precincts aforesaid, together with the royalty of hawking and hunting, for themselves, their heirs, and assigns, servants and tenants, in and upon the lands and premises aforesaid; saving and reserving to him, his heirs, and successors, one full fifth part of all gold mines, or gold ore, and one full tenth part of all silver mines, or silver ore, thereafter to be found within the said tract or territory of land, to have, hold, and enjoy, all the said entire tract, territory, or portion of land, and all and singular other the premises, with their and every of their appurtenances, thereby granted or mentioned, or intended to be granted (except as before is excepted) to the said Ralph Lord Hopton, Henry, then Lord Jermyn, now Earl of St. Alban's, John Lord Culpeper, Sir John Berkeley, now Lord Berkeley, of Stratton, Sir William Morton, Sir Dudley Wyatt, and
Thomas Culpeper, their heirs, assigns, forever, to their only
2117 use and behoof, and to no other use, intent, or purpose, whatsoever: yielding and paying therefore, yearly, at the feast of St. John the Baptist, to his said Majesty, his heirs, and successors, the sum of six pounds thirteen shillings and four pence, at the receipt of Jamestown, in the dominion of Virginia, in lieu of all services and demands whatsoever: Reciting also that the said Ralph Lord Hopton, John Culpeper, Sir Dudley Wyatt, and Thomas Culpeper, being dead, and the said Lord Hopton having sold his estate and interest in the premises to John Trethewey, Esq. the said tract, territory, or parcel of land, and all and singular other the premises, had been surrendered, together with the said letters patents, to be cancelled, to the intent that his said late Majesty might grant them new letters patent thereof, with such alterations, provisoes, and clauses, as therein after is expressed, he the said late King, in consideration of the said surrender, and for and in consideration of the many and faithful services done to his late royal father, of blessed memory, and to himself, by the said Henry Earl of St. Alban's, John Lord Berkeley, Sir William Morton, and John Trethewey, Esq. and for divers other good causes and considerations, him thereunto especially moving, of his especial grace, certain knowledge, and mere motion, did

give, grant, and confirm, unto the said Henry Earl, of St. Alban's, John Lord Berkeley, Sir William Morton, and John Trethewey, their heirs and assigns, forever, all that entire tract, territory, or parcel of land, situate, lying, and being in America, and bounded by and within the head of the rivers Tappahannock, alias Rappahannock, and Quiriough, alias Potowmac rivers, the courses of the said rivers, as they are commonly called and known by the inhabitants and descriptions of those parts, and Chesapeake bay, together with the rivers themselves, and all the islands within the banks of
2118 those rivers, and all woods, under woods, timber, and trees, ways, waters, rivers, ponds, pools, water courses, fishings, streams, havens, ports, harbours, creeks, wrecks of Sea, fish royal, deer, wild beast, and fowl, of what nature and kind soever, mines of gold and silver, lead, tin, iron, and copper, and quarries of stone and coal, which then were, or at any time thereafter should be had, coming being, arising, renewing, accruing, found or taken, within the bounds or precincts aforesaid, together with the royalties of hawking and hunting, for themselves, their heirs and assigns, servants and tenants, in and upon the land and premises aforesaid, and in and upon every part and parcel thereof; saving, excepting, and reserving, to his said late Majesty, his heirs and successors, one full fifth part of the whole, in five parts to be divided, of all gold mines, or gold ore, one full tenth part of all silver mines, and silver ore, thereafter to be had or found within the said tract or territory of land, to have, hold, and enjoy all the said entire tract, territory, or portion of land, and all and singular other the premises, with their and every of their appurtenances, thereby granted or mentioned or intended to be granted (except as before is excepted) to the said Henry Earl of St. Alban's, John Lord Berkeley, Sir William Morton, and John Trethewey their heirs and assigns forever to their only use and behoof and to no other use, intent, or purpose, whatsoever; yielding and paying therefore, yearly, at the feast of St. John the Baptist, to his said late Majesty, his heirs, and successors, the sum of five pounds, thirteen shillings and four pence, at the receipt of Jamestown in Virginia, in lieu of all services and demands whatsoever; with power to divide the said tract or territory of land into counties, hundreds, parishes, tithings, townships, hamlets, and boroughs, and to erect and build cities, towns, parish churches,
2119 colleges, chapels, free schools, alms houses, and houses of correction, and to endow the same, at their free wills and pleasures; and did appoint them full and perpetual patrons of all such churches, so to be built and endowed, with power of electing, nominating and presenting any fit person to the office, and place of master of any college, or school master of any school so to be founded and endowed; with power also to divide any part or parcels of the said tract or territory, or portion of lands, into manors, and to call the same after their own or any of their names, or by other name or names whatsoever, and within the same to hold a court, in the nature of a court baron, and to hold pleas of all actions, trespasses, covenants, accounts, contracts, detinues, debts, and demands whatsoever, where the debt or thing demanded exceed not the value of forty

shillings of current money of England, and to receive and take all amerciaments, fines, commodities, advantages, perquisites, and emoluments whatsoever, to such respective court barons belonging, or in any wise appertaining. And further, to hold within the said manors a court leet, and view of frank pledge, of all the tenants, residents, and inhabitants of the hundreds within such respective manors, to be holden twice in every year, and to erect fairs, markets, courts of pi- powder, with all things incident thereto; and to erect parks for breeding, feeding, and fustentation of deer, and other wild beasts of chase. And further, the said late King by the said charter, for himself, his heirs, and successors, did grant and give license to the said Henry Earl of St. Alban's, John Lord Berkeley, Sir William Morton, and John Trethewey, their heirs, and assigns, freely and without molestation of him, his heirs, and successors, to give, grant,
or by any ways or means sell or alien all and singular the
2120 premises by these presents granted, and every part and parcel thereof, to any person or persons being willing to contract for or by the same; to be holden of the said Henry Earl of St. Alban's, John Lord Berkeley, Sir William Morton and John Trethewey, their heirs and assigns, as of any of their aforesaid manors, in free and common soccage, by fealty only, and by suit of court, or by any other lawful tenure or terms used within the Kingdom of England, rendering and paying such rents and other lawful reservations, as shall seem fit and convenient to the said Henry Earl of St. Alban's, John Lord Berkeley, Sir William Morton, and John Trethewey, their heirs, and assigns, notwithstanding the statute, commonly called quia emptores terrarum, or any other statute, act, or ordinance, or provision, or any other thing, cause, or matter whatsoever to the contrary notwithstanding. And further, the said late King, for himself, his heirs, and successors, did grant to the said patentees, their heirs, executors, and assigns, to enlarge and confirm the said letters patent, by granting to them and their heirs other new ones, with such favorable concessions and grants as might supply any defects therein contained; with this proviso, nevertheless, that the said letters patent, or any thing therein contained, should not extend, or be construed to extend, to infringe, make void, or otherways prejudice, any contract or contracts, grant or grants whatsoever, theretofore made or granted by the Governor and Council of Virginia unto any planters, or other inhabitants, then in the actual possession thereof, by virtue of any such grants made before the nine and twentieth day of September, in the thirteenth year of his reign; but if any part of such lands so granted should escheat, or be otherwise forfeited, then the said patentees, their heirs, and assigns, might
dispose thereof, for their best benefit and advantage, at their
2121 own free wills and pleasures; with this proviso also, that so much of the said granted premises, as within the time and space of one and twenty years then next following should not be possessed, inhabited, or planted by the means or procurement of the said patentees, their heirs, or assigns, that then the said letters patent, should cease, determine, and become void; and lastly, with this further proviso, that the said patentees, their heirs, and assigns,

should not act or intermeddle in the military affairs or forces of or within the said tract of land and premises thereby granted, or any part thereof, or with the government or command of any of the castles, forts, or fortifications thereof, without the order, authority, or command, of the Governor and Council of Virginia, for the time being, or such other person or persons as his said late Majesty, his heirs or successors, should think fit to dispose the same; and that the Governor, Council, and Assembly of Virginia, for the time being, should have full power and authority to impose and lay any taxes and impositions upon the said territories thereby granted, and all the lands and premises thereby meant and intended to be granted, and all and every the possessor, inhabitants thereof, for the public and common defence of the said colony of Virginia, and the territory and lands thereby granted, as upon other parts of Virginia, proportionably when and as often as the necessity of the said colony should require the same for the common good; and that the said patentees, their heirs, and assigns, and other inhabitants of or in the premises, should be in all things subject and obedient to such laws and constitutions as were or should be made by the said Governor, Council, and Assembly, for or concerning the said colony, or the government thereof; anything thereinbefore contained to the contrary notwithstanding, as in the said letters patent more fully is contained.

2122 II. And whereas the late King James II. by other letters patent under the great seal of England, bearing date at Westminster, the seven and twentieth day of September, in the fourth year of his reign, reciting the above recited letters patent; and that the said former patentees, their heirs, and assigns, had, by good and sufficient conveyance, and assurance in the law, for valuable considerations, sold, conveyed, and assured the said whole tract, territory, and portion of land, and all and singular the premises, and every part and parcel thereof, and all their estate, right, title, and interest therein, together with the said letters patents, unto Thomas Lord Culpeper, eldest son and heir of John late Lord Culpeper, deceased, his heirs, and assigns, forever, who was thereby become sole owner and proprietor thereof in fee simple, for the considerations therein mentioned, and did give, grant and, confirm, unto the said Thomas Lord Culpeper, all that entire tract, territory, or parcel of land, situate, lying, and being in Virginia, in America, and bounded by and without the first heads or springs of the rivers of Tappahannock (alias Rappahannock) and Quiriough (alias Patowmack) rivers, the courses of the said rivers from their said first heads or springs, as they were commonly called and known by the inhabitants, and descriptions of those parts, and the bay of Chesapeake, together with the said rivers themselves, and all the islands within the uttermost banks thereof, and the soil of all and singular the premises, and all lands, woods, under woods, timber, and trees, ways, mountains, swamps, marshes, waters, rivers, ponds, pools, lakes, water courses, fishings, streams, havens, ports, harbours, bays, creeks, ferries, with all sorts of fish, as well whales, sturgeons and other royal fishes, as all others whatsoever, wrecks of sea, Floatson, Jetson, and Lagan, and

all sorts of deer, wild beasts, and fowl, of what nature or kind so
ever, and all manner of deodands goods of felons and fugi-
2123 tives, treasurers trove, waifs, strays, fines, forfeitures, escheats,
advowsons, royalties, hereditaments, whatsoever, with all
mines of gold and silver, lead, tin, iron, and copper, and all quarries
of stone and coal, within the limits and precincts aforesaid, which
then were, or at any time thereafter should be had, coming, being,
arising, growing, renewing, accruing, found, or taken, within the
bounds, limits, precincts, or places aforesaid; saving, excepting, and
reserving, to his said late Majesty, his heirs, and successors, one full
fifth part of all gold mines, or gold ore, and one full tenth part of all
silver mines, and silver ore, then being, or which thereafter should
be had or found, within the said tract or territory of land; to have,
hold, and enjoy, all the said entire tract, territory, or portion of
land, and every part and parcel thereof, and all and singular other
the premises, with their and every of their appurtenances thereby
granted or mentioned, or intended to be granted (except as before is
excepted) to the said Thomas Lord Culpeper, his heirs, and assigns,
forever, to his and their only use and behoof, and to no other
use, intent, or purpose, whatsoever; yielding and paying therefore,
yearly, from thenceforth, on the feast of St. John the Baptist, to his
late Majesty, his heirs, and successors, the sum of six pounds thir-
teen shillings and four pence, at the receipt of Jamestown, in the
colony of Virginia, in lieu of all services and demands whatsoever,
the first payment to be made on the feast day of St. John the Baptist
next ensuing the date of the said letters patent: and his said late
Majesty did thereby for himself, his heirs, and successors, further
give, grant, ratify, and confirm to the said Thomas Lord Culpeper,
his heirs, and assigns, forever, all and singular the grants, powers, au-
thorities, privileges, licenses, and clauses in the said hereinbefore re-
cited letters patents mentioned, granted, or conveyed, in as
2124 large and ample manner, to all intents and purposes whatso-
ever, as if the same, and every of them had been particularly
granted and expressed in these his letters patent, except only the
above mentioned proviso; and his said late Majesty did further, of
his especial grace, certain knowledge, and mere motion, for him-
self, his heirs, and successors, fully and absolutely, forever, release
and discharge the said above mentioned proviso, and every part
thereof, and every matter and thing therein contained, in as large
and ample manner, to all intents and purposes whatsoever, as if
the same had never been made, thereby declaring the same to be
null and void; and the said Thomas Lord Culpeper, his heirs, and
assigns, and the tract, territory, and premises, and every part thereof,
to be forever freed, cleared, and discharged from the same, so and
in such manner that the said Thomas Lord Culpeper, his heirs and
assigns, might freely and absolutely enter into, have, hold, occupy,
possess, and enjoy, the said tract, territory, and all and singular
other the premises, freed and discharged of the said proviso, and all
right, title, and equity, thereupon to be had, in as large, ample, and
beneficial manner, to all intents and purposes, as if the same pro-
viso had been never had or made any thing in the said recited let-

ters patent, or anything therein or in the last mentioned letters patent, to the contrary thereof, in any wise notwithstandig, as in the said last recited letters patent is more fully contained.

III. And whereas the right Honourable Thomas Lord Fairfax, baron of Cameron in that part of Great-Britain called Scotland, heir at law to the said Thomas Lord Culpeper, is now become sole proprietor of the said territory, with the appurtenances, and the above recited letters patents; and whereas divers great quantities of land have been granted to adventurers and planters within the said ter-
2125 ritory, in fee simple, by the agents and attornies of the said Lord Fairfax, and his predecessors, former proprietors of the said territory, and letters patents, by virtue of divers letters of attorney, from time to time by them respectively given and granted to their said attornies and agents, but now of late, after long possessions, and great and valuable improvements made upon the said lands, by such grantees, questions are like to arise between them and the said present proprietor touching the validity of such grants as well in respect to a construction set up and maintained, of the said letters of attorney, that the powers therein contained were not full and sufficient to enable and warrant the said agents and attornies to pass away estates in fee simple, as in respect of the said Lord proprietor's estate in the premises, the same being now held by him as tenant in taille, under the will or wills of some of his ancestors, whereby the minds of many of his Majesty's good subjects, possessors of lands, and tenements within the said territory, are greatly disquieted, and many controversies and expensive lawsuits may probably ensue: For the prevention whereof, and for settling peace between his Lordship and his said tenants,

IV. Be it enacted, by the Lieutenant Governor, Council and Burgesses, of this present General Assembly, and it is hereby enacted, by the authority of the same, that from henceforth all and every grant and grants, heretofore duly and regularly made and passed by any of the agents or attornies of the proprietors of the said territory, or any of them, shall be good, available, and binding in law, to pass such estate or estates as therein have been granted; and the grantees, their heirs, and assigns, respectively, shall for ever hereafter peaceably and quietly have, hold, and enjoy the same granted premises, according to such granted estates, under the rents and services by the said grants reserved, notwithstanding the infancy, cover-
2126 ture, or any misprision or mistake of the names, dignity, or title, of the said proprietors, or either of them, or any misrecital, omission, or defect in the said grant or grants, or any of them, so as the same have been made and signed by the agents or attornies of the said proprietors, or the husband, guardian or guardians, trustee or trustees, of any of them, and passed under the common seal of the office kept by them for that purpose.

Endorsed: Supreme Court U. S. No. 1 Original, Oct. Term 1907. Maryland v. West Virginia Filed Oct. 15 1907.

Office Supreme Court, U. S. Filed Oct 15, 1907. James H. McKenney, Clerk.

2127 6 Hening's Statutes at Large, Chapter 55, Page 198.

An Act confirming the grants made by his majesty, within the bounds of the Northern Neck, as they are now established. Passed October 27th, 1748.

I. Whereas in the late dispute and controversy, touching the limits and boundaries of the several letters patent granted by their late majesties King Charles the second, and King James the second, unto the ancestors of the right honourable Thomas Lord Fairfax, it hath been adjudged and determined by his present majesty, in council, that the said letters patent do include all that tract of territory of land between the rivers of Patowmack and Rappahannock, and the line now marked from the head spring of the said river Potowmack, to the head spring of Rappahannock, commonly called the Conway; in which said tract or territory of land, as is before described, many adventurers and planters have taken up great quantities of land, and obtained grants and patents thereof from the crown, under the seal of this colony; And whereas the said Thomas Lord Fairfax hath consented, before the King, in council, that the several grants and patents, made by the crown of the lands included in the boundary aforesaid, should be confirmed to the several grantees, their heirs and assigns; to be held nevertheless of the said Lord Fairfax, under the like rents, services, profits, and emoluments, as should be paid, done, and arise, by and from the said grants made by the crown.

II. Be it therfore enacted by the Lieutenant Governor, Council and Burgesses, of this present General Assembly, and it is hereby enacted by the authority of the same, That all grants and patents whatsoever, under the seal of this colony, for lands situate and lying within the limits and boundaries of the letters patent granted
2128 to the ancestors of the said Lord Fairfax, as the same are now settled and determined, heretofore made and granted by the crown, shall be held, deemed, and taken to be valid and effectual; and the adventurers and planters to whom the same were granted, their heirs and assigns, shall, for ever hereafter, peaceably and quietly, have, hold, and enjoy, the said granted premises, respectively, according to such granted estates, under the rents and services in the said grants reserved; to be paid and performed to the said Thomas Lord Fairfax, his heirs and assigns, for ever: Any misrecital or defect in the said grants notwithstanding.

Endorsed: Supreme Court U. S. No. 1 Original, Oct. Term 1907. Maryland *v.* West Virginia. Filed Oct. 15 1907. Office Supreme Court U. S. Filed Oct. 15 1907. James H. McKenney, Clerk.

2129 Revised Code of 1819, Chap. 91, Page 350.

An Act for Safe Keeping the Land Papers of the Northern Neck in the Register's Office (*a*).

(Passed October, 1785.)

1. Whereas it is necessary and expedient that the records and papers, upon which the titles to their lands of the citizens of this commonwealth depend, should be kept in the same office, and whereas it hath heretofore been customary to keep the records, documents, and entries of the lands within the district of the Northern Neck, in the office of the late proprietor:

2. Be it enacted, That in future all such records, documents, books, and papers shall be in the keeping of the register of the land office, in the city of Richmond, who is hereby appointed keeper of the same; and the Executive shall, within three months from the passing of this act, cause the said records, documents, books and papers to be safely removed from the said proprietary office into the office of the register, who shall give a receipt for the same, which receipt shall be lodged in the Council Chamber, and recorded in the Council Books. And the expenses incurred by the said removal shall be paid out of the contingent fund.

3. And be it further enacted, That every person having title or claim to any land or lands within the Northern Neck shall, on application, be furnished with an authenticated copy of any record, document or writing by the register; and such authenticated copies shall be evidence in all courts of record in which the title or quit rents of any of the said lands shall at any time be drawn into question.

4. And whereas, since the death of the late proprietor, the
2130 right honorable Thomas lord Fairfax, no mode hath been adopted to enable those who had before his death made entries for waste and unappropriated lands in his office, nor to enable those who since his death have made entries within the said district, according to an act of Assembly, intituled an act, concerning surveyors, to obtain titles for the same:

Be it therefore enacted, That where any surveys have been heretofore made, or hereafter shall be made under entries made in the life of the said proprietor, or under entries made with the surveyor of any county, under the act of Assembly aforesaid, and which have been returned to the said proprietary office, or shall hereafter be returned to the register's office, the register shall make out grants therefor, to bear teste under the hand of the Governor and the seal of this Commonwealth, in the same manner as is by law directed in cases of other unappropriated lands; and the surveyor- with whom such entries have been made, are hereby directed and empowered, to proceed to survey and record the same, and to make return of such surveys to the register's office in the same manner and within the same time, as is or shall be directed in cases of warrants issued for other unappropriated lands within this Commonwealth, and thereupon grants shall issue in the manner herein-before directed.

5. And be it further enacted, That from and after the passing of this act, the unappropriated lands within the said district, shall be subject to the same regulations, and granted in the same manner, and all caveats shall be proceeded upon tried and determined as is by law directed in cases of other unappropriated lands belonging to this Commonwealth.

6. And be it further enacted, That, upon grants issued
2131 under this act, in consequence of entries heretofore made, a composition after the rate of thirteen shillings and four pence for every hundred acres, shall be paid to the register, to be by him accounted for and paid into the public treasury, in the same manner as other monies by him received by virtue of his office; and the surveyors within the said district shall for their services be entitled to and receive the same fees as other surveyors within this Commonwealth for the like services.

7. And be it further enacted, that the land holders within the said district of the Northern Neck shall be forever hereafter exonerated and discharged from composition and quit rents, any law, usage, or custom to the contrary notwithstanding.

Endorsed: Supreme Court U. S. No. 1, Original, Oct. Term, 1907. Maryland *v.* West Virginia. Filed Oct. 15, 1907. Office Supreme Court U. S. Filed Oct. 15, 1907. James H. McKenney, Clerk.

2132 Revised Code of 1819, Chap. 92, Pages 352 and 353.

An Act concerning certain lands lying in the Northern Neck (*a*).

(Passed December 10, 1796.)

Whereas sundry appropriations of lands supposed to lie within the Northern Neck, have been made in virtue of land warrants issued under the authority of the Commonwealth of Virginia, which lands are claimed under Denny Fairfax, who was devisee of Thomas Lord Fairfax, late proprietor of the said Northern Neck: And whereas the Commonwealth has asserted a right to the estate so devised to the said Denny Fairfax, he being an alien, which several remain undecided and are now pending in the court of appeals of this Commonwealth and in the Supreme court of the United States, and a proposition made by a resolution of the General Assembly, in consequence of a petition from the counties of Hampshire, Hardy, and Shenandoah, for an accommodation of the said pending controversies, in the words following: Resolved, That, in case the devisees of Lord Fairfax, or those claiming under them, will relinquish all claims to lands supposed to lie within the Northern Neck, which were waste and unappropriated at the time of the death of Lord Fairfax, that it would be advisable for this Commonwealth to relinquish all claim to any lands specifically appropriated by the said Lord Fairfax to his own use either by deed or actual survey," having been accepted by a letter in the words and figures following—Rich-

mond, November the 24th, 1796, Sir, being one of the purchasers of the lands of Mr. Fairfax, and authorized to act for them all, I have considered the resolution of the General Assembly on the petition of sundry inhabitants of the counties of Hampshire,
2133 Hardy, and Shenandoah, and have determined to accede to the proposition it contains. So soon as the conveyance shall be transmitted to me from Mr. Fairfax, deeds extinguishing his title to the waste and unappropriated lands on the Northern Neck, shall be executed, provided an act passes during this session, confirming, on the execution of such deeds, the title of those claiming under Mr. Fairfax, to lands specifically appropriated and reserved by the late Thomas lord Fairfax, or his ancestors, for his or their use. I remain, Sir, with much respect and esteem, your obedient servant, John Marshall. The honorable, the speaker of the House of Delegates. For carrying the said agreement and accommodation into effect:

1. Be it enacted, that upon the execution of a deed by Denny Fairfax or those having title under him or the said Thomas Lord Fairfax, extinguishing on behalf of this Commonwealth, his or their title to all lands lying within the Northern Neck, which, by the terms of the above recited proposal and agreement, he or they are bound to relinquish all claim, right and title of the Commonwealth of Virginia in or to any lands lying in the said Northern Neck, which is by the terms of the said proposal and agreement to be relinquished, shall from thence forth be extinguished, null and void; and the said Denny Fairfax, or those claiming under him, and his or their heirs, shall hold the same, as if he the said Denny had been a native citizen of this Commonwealth, and as if no escheat or forfeiture thereof had ever taken place; any law to the contrary notwithstanding.

2. Saving to every person, other than this Commonwealth and Denny Fairfax, and those claiming under him any right or title, in law or equity, which he or they may have to the lands in the
2134 said Northern Neck of Virginia, or any part thereof.

Endorsed: Supreme Court, U. S. No. 1, Original. Oct. Term, 1907. Maryland *vs.* West Virginia. Filed Oct. 15, 1907. Office Supreme Court, U. S. Filed Oct. 15, 1907. James H. McKenney, Clerk.

2135 5 Hening's Statutes at Large, Page 78, Chapter 21.

An Act for Erecting Two New Counties, and Parishes; and Granting Certain Encouragements to the Inhabitants Thereof.

I. Whereas great numbers of people have settled themselves of late, upon the rivers of Sherrando, Cohongoruton, and Opeckon, and the branches thereof, on the north-west side of the Blue ridge of mountains, whereby the strength of this colony, and its security upon the frontiers, and his majesty's revenue of quit-rents, are like to be

much increased and augmented: For giving encouragement to such as shall think fit to settle there,

II. Be it enacted, by the Lieutenant-Governor, Council, and Burgesses, of this present General Assembly, and it is hereby enacted, by the authority of the same, That all that territory and tract of land, at present deemed to be part of the county of Orange, lying on the north west side of the top of the said mountains, extending from thence northerly, westerly, and southerly, beyond the said mountains, to the utmost limits of Virginia, be separated from the rest of the said county, and erected into two distinct counties and parishes; to be divided by a line to be run from the head spring of Hedgman river, to the head spring of the river Potowmack: And that all that part of the said territory lying to the northeast of the said line, beyond the top of the said Blue ridge, shall be one distinct county, and parish; to be called by the name of the county of Frederick, and parish of Frederick: And that the rest of the said territory, lying on the other side of the said line, beyond the top of the said Blue ridge, shall be one other distinct county, and parish; to be
2136 called by the name of the county of Augusta, and parish of Augusta.

III. Provided always, That the said new counties and parishes shall remain part of the county of Orange, and parish of Saint Mark, until it shall be made appear to the governor and council, for the time being, that there is a sufficient number of inhabitants for appointing justices of the peace, and other officers, and erecting courts therein, for the due administration of Justice; so as the inhabitants of the said new counties and parishes be henceforth exempted from the paiment of all public, county and parish levies, in the county of Orange, and parish of Saint Mark; yet, that such exemption be not construed to extend to any of the said levies laid and assessed, at or before the passing of this act.

IV. And be it further enacted, That after a court shall be constituted in the said new counties respectively, the court for the said county of Frederick be held monthly, upon the second Friday; and the court for the said county of Augusta, be held upon the second Monday, in every month: And that the said counties and parishes respectively shall have and enjoy all rights, privileges, and advantages whatsoever, belonging to the other counties and parishes of this colony. And for the better encouragement of aliens; and the more easy naturalization of such who shall come to inhabit there,

V. Be it further enacted, That it shall and may be lawful, for the governor, or commander in chief, of this colony, for the time being, to grant letters of naturalization to any such alien, upon a certificate from the clerk of any county court, of his or their having taken the oaths appointed by act of parliament to be taken
2137 instead of the oaths of allegiance and supremacy; and taken and subscribed the oath of abjuration, and subscribed the test, in like manner as he may do, upon taking and subscribing the same before himself.

VI. And for the more easy paiment of all levies, secretary's, clerks, sherifs, and other officers fees, by the inhabitants of the said new

counties, Be it further enacted, That the said levies and fees shall and may be paid in money, for tobacco, at three farthings per pound, without any deduction, And that the said counties be and are hereby exempted from public levies, for ten years.

VII. Provided nevertheless, That from and after the passing of this act, no allowance whatsoever shall be made to any person, for killing wolves, within the limits of the said new counties. Any law, custom, or usage, to the contrary, hereof, notwithstanding.

VIII. And, for the better ordering of all parochial affairs in the said new parishes, Be it enacted, by the authority aforesaid, That the freeholders and housekeepers of the same, respectively, shall meet, at such time and place, as the governor, or commander in chief, of this dominion, for the time being, with the advice of the council, shall appoint, by precept under his hand, and the seal of the colony; to be directed to the sherifs of the said new counties, respectively, and by the said sherifs publickly advertised; and then and there elect twelve of the most able and discreet persons of their said parishes, respectively: Which persons so elected, having taken the oaths appointed by law, and subscribed to be conformable to the doctrine and discipline of the church of England, shall, to all intents and purposes, be deemed and taken to be the vestries of the said new parishes, respectively.

2138 Endorsed: Supreme Court U. S. No. 1, Original. Oct. Term, 1907. Maryland *v.* West Virginia. Filed Oct. 15, 1907. Office Supreme Court, U. S. Filed Oct. 15, 1907. James H. McKenney, Clerk.

2139 6 Hening's Statutes at Large, Chapter 14.

An Act for adding part of the county and parish of Augusta, to the county and parish of Frederick; and for dividing the county and parish of Frederick, and the part of Augusta to be added thereto, into two counties and parishes.

I. Whereas part of the county and parish of Augusta, lies within the bounds of the territory or tract of land, called the Northern Neck belonging to the right honourable Thomas Lord Fairfax, Baron of Cameron; and it will be more convenient if the dividing line between the said territory, and the other part of this colony, be established as the line of the said county, and that part of the said county be added to the county and parish of Frederick. And whereas the said county and parish of Frederick, are of a very long and large extent, and inconvenient to the inhabitants thereof.

II. Be it enacted by the Lieutenant Governor, Council, and Burgesses, of this present General Assembly, and it is hereby enacted by the authority of the same, That on the first day of May, next ensuing, all that part of the county of Augusta, which lies within the bounds of the Northern Neck, be added to, and made a part of the county of Frederick; and that from and immediately after the said first day of May, the said county of Frederick, and the said part of

the county of Augusta so to be added to, and made part of the county of Frederick as aforesaid, be divided into two counties; and that all that part thereof, lying to the westward of the ridge of mountains, commonly called and known by the names of the Great North, or Cape Capon mountain, and Warin Spring mountain, extending to Potomack river, be one distinct county, and called and known by the name of Hampshire; and all that other part thereof, lying to
2140 the eastward of the said ridge of mountains, be one other distinct county, and retain the name of Frederick.

III. And for the due administration of justice in the said county of Hampshire, after the same shall take place, Be it enacted by the authority aforesaid, That after the said first day of May, a court for the said county of Hampshire be constantly held by the justice thereof, upon the second Tuesday in every month, in such manner as by the laws of this colony is provided, and shall be by their commissions directed.

IV. And be it further enacted, by the authority aforesaid, That all that part of the parish of Augusta, in the county of Augusta, which after the division aforesaid, will lie within the said counties of Frederick and Hampshire, shall be added to, and made part of the parish of Frederick.

V. Provided always, That nothing herein contained shall be construed to hinder the sheriffs or collectors of the said counties of Augusta and Frederick, or the collectors of the parish of Augusta, in the county of Augusta, as the same now stand intire and undivided from collecting and making distress for any public dues or officers fees, which shall remain unpaid by the inhabitants of that part of the county of Augusta to be added to the county of Frederick as aforesaid, and the inhabitants of the said county of Hampshire, respectively, at the time the same shall take place; but such sheriff or collectors respectively, shall have the same power to collect and distrain for the said fees and dues, as if this act had never been made.

VI. Provided, also, That the courts of the said Counties of Augusta and Frederick, shall have jurisdiction of all actions and suits, both in law and equity, depending before them, respectively, at the time the said division shall take place, and shall try and determine such actions and suits, and issue process, and award execution against the body or estate of the defendant or defendants in any such
2141 action or suit, in the same manner as if this act had not been made, any law, usage, or custom to the contrary, in any wise notwithstanding.

VII. And be it further enacted, That from and after the first day of May, which shall be in the year of our Lord, one thousand seven hundred and fifty six, the said parish of Frederick, shall be divided into two distinct parishes, by the line dividing the said county of Frederick, from the said county of Hampshire, and that all that part of the said parish of Frederick, which, after such division, will lie within the said county of Frederick, shall retain the name of the parish of Fredrick; and all the other part thereof, shall be called and known by the name of the parish of Hampshire.

VIII. Provided always, That nothing herein contained shall be

construed to hinder the sheriff or collector of the said parish of Frederick, as the same now stands undivided, to make distress for any levies or other dues which shall be due from the inhabitants of the said parish of Hampshire, after the said first day of May, one thousand seven hundred and fifty six.

IX. And be it further enacted, by the authority aforesaid, That the freeholders and housekeepers of the said parish of Hampshire, shall meet at some convenient time and place, to be appointed and publickly advertised, at least one month before, by the sheriff of the said county of Hampshire, before the first day of July, one thousand seven hundred and fifty six, and then and there elect twelve of the most able and discreet persons of the said parish, to be vestrymen thereof, which said persons so elected, having [illegible] the court of the said county of Hampshire, taken and subscribed the oaths appointed
to be taken, by one act of parliament, made in the first year
2142 of the reign of his late majesty King George the first, intituled, An act for the further security of his majesty's person and government, and the succession of the crown in the heirs of the late princess Sophia, being protestants, and for extinguishing the hopes of the pretended prince of Wales, and his open and secret abettors, and taken and subscribed the oath of abjuration, and repeated and subscribed the test, and also subscribed to be conformable to the doctrine and discipline of the church of England, shall to all intents and purposes be deemed and taken to be vestrymen of the said parish.

X. And be it further enacted, by the authority aforesaid, That upon the death, removal, or resignation of any of the said vestrymen, the remaining vestrymen shall be, and they are hereby impowered to choose and elect another vestryman, in the room of such vestryman so dying, removing or resigning.

Endorsed: Supreme Court U. S. No. 1, Original, Oct. Term, 1907. Maryland *v.* West Virginia. Filed Oct. 15, 1907.

Office Supreme Court U. S. Filed Oct. 15, 1907. James H. McKenney, Clerk.

2143 12 Hening's Statutes at Large, Chapt. 35, Pages 86, 87, & 88.

An Act Dividing the County of Hampshire.

Be it enacted by the General Assembly, That from and after the first day of February next, the county of Hampshire shall be divided into two distinct counties, by a line beginning at the north branch of Potowmack, opposite to the mouth of Savage river, and running thence in a direct course so as to strike the upper end of the plantation known by the name of Myres's mill, on New creek; thence in a direct course to John Lewis's mill, on Patterson's creek; thence in a direct course to the highest part of the mountain known by the name of the High Nob; thence in a direct course to the gap of the Short Arse mountain, where the North river runs through the same; thence along the road leading by the upper end of Henry Fry's plantation, on cape Capon, and along the said road to the top of the

North mountain to the dividing line between the counties of Shenandoah and Hampshire; and that all that part of the said county lying south of the said line shall be called and known by the name of Hardy; and the residue of the said county shall retain the name of Hampshire. A court for the said county of Hardy, shall be held by the justices thereof on the Friday after the second Tuesday in every month, after such division shall take place, in such manner as is provided by law for other counties, and shall be by their respective commissions directed. The justices to be named in the commission of the peace for the said county of Hardy, shall meet at the house of William Bullitt, in the said county, upon the first court-day after the said division shall take place; and having taken the oaths prescribed by law, and administered the oath of office to, and taken bond
2144 of the sheriff, according to law, shall proceed to appoint and qualify a clerk, and fix upon a place for holding courts in the said county at or as near the center thereof as the situation and convenience will admit; and thenceforth the said court shall proceed to erect the necessary public buildings at such place, and until such buildings be completed, to appoint any place for holding courts as they shall think proper. Provided always, That the appointment of a place for holding courts, and of a clerk, shall not be made unless a majority of the justices of the said county be present; where such majority shall have been prevented from attending by bad weather, or their being at the time out of the county, in such case the appointment shall be postponed until some court-day when a majority shall be present. The governor, with the advice of the council, shall appoint a person to be first sheriff of the said county, who shall continue in office during the term, and upon the same conditions, as is by law appointed for other sheriffs. Provided also, That it shall be lawful for the sheriff of the said county of Hampshire, to collect and make distress for any public dues or officers fees, which shall remain unpaid by the inhabitants thereof at the time such division shall take place, and shall be accountable for the same in like manner as if this act had not been made. And that the court of the said county of Hampshire, shall have jurisdiction of all actions and suits, in law or equity, depending before them at the time of the said division, and shall try and determine the same, and award execution thereupon. That in all elections of a senator, the said county of Hardy shall be of the same district with the said county of Hampshire.

2145 Endorsed: Supreme Court U. S. No. 1, Original. Oct. Term, 1907. Maryland *v.* West Virginia. Filed Oct. 15, 1907.

Office Supreme Court U. S. Filed Oct. 15, 1907. James H. McKenney, Clerk.

2146 12 Hening's Statutes at Large, Chap. 56, Page 597.

An Act for Adding Part of the County of Hardy to the County of Hampshire.

(Passed December 4, 1787.)

1. Be it enacted by the General Assembly, That all that part of the county of Hardy lying north of a line to be run from the mouth of Stoney river, to the High Knob, shall be, and the same is hereby added to, and made part of the county of Hampshire. Provided always, that nothing herein contained, shall be construed to hinder the sheriff, or collector, of the said county of Hardy, from collecting and making distress for any dues, or officers fees, remaining unpaid by the inhabitants of that part of the said county added to Hampshire, but he shall collect and account for the same in like manner, as if this act had not been made.

Endorsed: Supreme Court U. S. No. 1, Original. Oct. Term, 1907. Maryland *v.* West Virginia. Filed Oct. 15, 1907.
Office Supreme Court U. S. Filed Oct. 15, 1907. James H. McKenney, Clerk.

2147 12 Hening's Statutes at Large, Chap. 94, Pages 637 and 638.

An Act for Forming a New County of the Counties of Augusta, Hardy, and Rockingham.

(Passed the 4th of December, 1787.)

I. Be it enacted by the General Assembly, That from and after the first day of May next, all those parts of the counties of Augusta, Hardy, and Rockingham, within the following bounds, to wit; Beginning on the line of Rockingham county, on the North mountain, opposite to Charles Wilson's on the South Fork, thence a straight line to the Clay Lick on the North Fork, thence to the top of the Allegana, and along the same and the east side of the Greenbrier-waters to the southwest fountain of the South Branch, and thence between the same and the waters of James-River, along the dividing ridge to the said North mountain, and with the top of the same to the beginning, shall form one distinct county, and be called and known by the name of Pendleton.

II. A Court for the said county of Pendleton shall be held by the justices thereof on the first Monday in every month, after such county shall take place, in like manner as is provided by law for other counties, and shall be by their commissioners directed. And the court of quarterly sessions for the said county of Pendleton, shall be held in the months of April, June, September, and December, in every year.

III. The justices to be named in the commission of the peace for the said county of Pendleton, shall meet at the house of Zariah

Stratton in the said county, upon the first court-day after the said county shall take place, and having taken the oaths prescribed
2148 by law, and administered the oath of office to, and taken bond of the sheriff according to law, proceed to appoint and qualify a clerk, and fix upon a place for holding courts in the said county, at or as near the centre thereof as the situation and convenience will admit of; and thenceforth the said court shall proceed to erect the necessary public buildings at such place; and until such buildings be completed, to appoint any place for holding courts, as they shall think proper. Provided always, That the appointment of a place for holding courts and of a clerk, shall not be made unless a majority of the justices of the said county be present; where such majority shall have been prevented from attending by bad weather, or their being at the time out of the county, in such case the appointment shall be postponed until some court day when a majority shall be present.

IV. The governor, with advice of the council, shall appoint a person to be first sheriff of the said county, who shall continue in office during the term, and upon the same conditio.s as are by law appointed for other sheriffs.

V. Provided also, and be it further enacted, That it shall be lawful for the sheriffs of each of the said counties of Augusta, Hardy, and Rockingham, to collect and make distress for any public dues and officers fees which shall remain unpaid by the inhabitants thereof, at the time the said county shall take place, and shall be accountable for the same in like manner as if this act had not been made.

VI. And the courts of the said counties shall have jurisdiction of all actions and suits which shall be depending before them at the time the said county of Pendleton shall take place; and shall try and determine the same, and award execution thereon.

2149 VII. In all future elections of a senator the said county of Pendleton shall be of the same district as the county of Augusta.

Endorsed: Supreme Court U. S. No. 1, Original. Oct. Term, 1907. Maryland *v.* West Virginia. Filed Oct. 15, 1907.

Office Supreme Court, U. S. Filed Oct. 15, 1907. James H. McKenney, Clerk.

2150 *Acts of the Legislature.*

Chap. 7. An Act Establishing the County of Mineral out of a Part of the County of Hampshire.

Passed February 1, 1866.

Be it enacted by the Legislature of West Virginia:

1. So much of the county of Hampshire as is included within the following boundary lines, to-wit: Beginning at the point where the dividing line between the county of Hardy and the said county of

Hampshire intersects the line between this state and the state of Maryland, thence running with said line between said counties of Hardy and Hampshire, crossing Patterson's Creek to the dividing line between the townships of Welton and Romney, in the said county of Hampshire, on the top of Middle Ridge, thence along the top of Middle Ridge and with the said line between the townships of Welton and Romney, to the dividing line between the townships of Frankfort and Springfield in the said county of Hampshire; thence along the top of said Middle Ridge and with said line between the said townships of Frankfort and Springfield to the Maryland line, thence with the dividing line between this state and the state of Maryland to the place of beginning, shall form one distinct and new county, which shall be called and known by the name of Mineral county.

2. All township officers within the bounds of the said new county, at the date of the passage of this act, shall remain in office for and during the terms for which they have been elected, and until their successors shall be elected and qualified according to law. The supervisors of the several townships within the said new county in office as aforesaid, shall constitute the board of supervisors of
2151 the said county of Mineral until their successors are elected and qualified as aforesaid, and shall have all the powers and perform all the duties, vested in and imposed by law upon other boards of supervisors.

3. The county seat of said new county shall be at the village of New Creek, situated on the Baltimore and Ohio railroad, and the board of supervisors of said new county shall proceed as soon as practicable after the passage of this act to provide a suitable court house and other public buildings for the said county, in the manner required by the seventh section of the act passed October twenty-first, eighteen hundred and sixty-three, entitled "An Act defining in part, the powers and duties of the several counties of the state."

Endorsed: Supreme Court U. S. No. 1, Original. Oct. Term, 1907. Maryland *v.* West Virginia. Filed Oct. 15, 1907.

Office Supreme Court, U. S. Filed Oct. 15, 1907. James H. McKenney, Clerk.

2152 *Acts of Legislature, Session* 67 & 8.

Chapter 86. An Act to Alter Part of the Division Line Between the Counties of Hampshire and Mineral.

Passed February 29, 1868.

Be it enacted by the Legislature of West Virginia:

1. The division line between the counties of Hampshire and Mineral is hereby altered so as to run as follows, to wit: Beginning at the present corner of Hampshire and Mineral in the Hardy line, running with the said line between Hampshire and Hardy to the

top of what is known as the high knob on Mill Creek Mountain; thence leaving said line, running along the top of said mountain to Mien's gap and crossing it, and with the same mountain range to a point opposite what is known as Herriott's divide, (between Herriott's and Hamilton's); thence with said divide and the same course continued to the top of Middle range, there intersecting the present line between the counties of Hampshire and Mineral and thence running with the same to the Maryland line; said territory to constitute a township known as Mill creek township, to be organized and governed as the other townships of the said county of Mineral.

Endorsed: Supreme Court U. S. No. 1, Original. Oct. Term, 1907. Maryland *v.* West Virginia. Filed Oct. 15, 1907.
Office Supreme Court, U. S. Filed Oct. 15, 1907. James H. McKenney, Clerk.

2153 *Acts of the Legislature.*

Chap. 29. An Act Establishing the County of Grant Out of a Part of the County of Hardy.

Passed February 14, 1866.

Be it enacted by the Legislature of West Virginia:

1. So much of the county of Hardy as is included within the following boundary lines, to-wit: Beginning at Fairfax Stone, at the junction of the line between West Virginia and Maryland, corner to said county of Hardy, and with the said boundary line down the north branch of the Potomac to the Hampshire (now Mineral) and Hardy county line; then with the said line southeastward crossing Patterson's creek mountain, and thence running the division line between the proposed new county and Hardy county, southward along the top of mountain to the gap below the mouth of Luney's creek, thence with a straight line to the top of Elkhorn Rock, thence along the top of the mountain range which divides the waters of south Mill Creek from those of the South Fork to the Hardy and Pendleton county line, thence with the latter northwestward to the Hardy and Tucker county lines, and with latter to the beginning, shall form one distinct and new county, which shall be called and known by the name of Grant county.

Endorsed: Supreme Court U. S. No. 1, Original. Oct. Term, 1907. Maryland *v.* West Virginia. Filed Oct. 15, 1907.
Office Supreme Court, U. S. Filed Oct. 15, 1907. James H. McKenney, Clerk.

2154 9 Henning's Statutes at Large, Chapter 45, Pages 262 & 263.

An act for ascertaining the boundary between the county of Augusta, and the district of West Augusta, and for dividing the said district into three distinct counties.

Whereas it is expedient to ascertain the boundary between the county of Augusta and the district of West Augusta, Be it therefore enacted by the General Assembly of the commonwealth of Virginia, and it is hereby enacted by the authority of the same, That the boundary between the said district and county shall be as follows, to wit: Beginning on the Allegheny mountain between the heads of Potowmack, Cheat, and Green Brier rivers, thence along the ridge of mountains which divides the waters of Cheat river from those of Green Brier, and that branch of the Monongahela river called Tyger's valley river to the Monongahela river, thence up the said river, and the west fork thereof, to Bingerman's creek, on the north west side of the said west fork, thence up the said creek to the head thereof, thence in a direct course to the head of Middle Island creek, a branch of the Ohio, and thence to the Ohio, including all the waters of the said creek in the aforesaid district of West Augusta, all that territory lying to the northward of the aforesaid boundary, and to the westward of the states of Pennsylvania and Maryland, shall be deemed, and is hereby declared, to be within the District of West Augusta.

And to render the benefits of government, and administration of justice, more easy and convenient to the people within the said district: Be it therefore enacted, by the authority aforesaid, That from and after the eighth day of November next ensuing all that part of the said district lying within the following lines, to wit:
2155 Beginning at the mouth of Cross creek, thence up the same to the head thereof, thence south eastwardly to the nearest part of the ridge which divides the waters of the Ohio from those of Monongahela, thence along the said ridge to the line which divides the county of Augusta from the said district, thence with the said boundary to the Ohio, thence up the same to the beginning, shall be one distinct county, and be called and known by the name of Ohio county: and all that part of the said district lying to the northward of the following lines, viz. beginning at the mouth of Cross creek, and running up its several courses to the head thereof, thence south eastwardly to the nearest part of the aforesaid dividing ridge between the waters of the Monongahela and Ohio, thence along the said ridge to the head of Ten Mile creek, thence east to the road leading from Catfish camp to Redstone old fort, thence along the said road to the Monongahela river, thence crossing the river to the said fort, thence along Dunlap's old road to Braddock's road, and with the same to the meridian of the head fountain of Potowmack, shall be one other distinct county, and be called and known by the name of Yohogania county; and all that part of the said district lying to the northward of the county of Augusta, to the westward of the meridian of the head fountain of Potowmack, to the south-

ward of the county of Yohogania, and to the eastward of the county of Ohio, shall be one other distinct county, and shall be called and known by the name of the county of Monongalia.

2156 And for the administration of justice in the said counties of Ohio, Yohogania, and Monongalia, after the same shall take place: Be it further enacted, by the authority aforesaid, That after the said eighth day of November courts shall be constantly held every month by the justices of the respective counties, upon the days hereafter specified for each county respectively, that is to say: For the county of Ohio, on the first Monday, for the county of Monongalia, on the second Monday, and for the county of Yohogania, on the fourth Monday, in every month, in such manner as by the laws of this commonwealth is provided for other counties, and as shall be by their commission directed.

Endorsed: Supreme Court U. S. No. 1, Original. Oct. Term, 1907. Maryland *v.* West Virginia. Filed Oct. 15, 1907.
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2157 XI. Hening's Statutes At Large.

Chap. VI. An Act for Dividing the County of Monongalia.

I. Be it enacted by the General Assembly, that from and after the twentieth day of July next, the county of Monongalia shall be divided into two distinct counties, by a line to begin on the Maryland line, at the fork ford on the land of John Goff, thence a direct course to the head waters of Big Sandy creek, thence down the said creek to Tyger's valley fork of Monongalia river, thence down the same to the mouth of the west fork river, thence up the same to the mouth of Biggerman's creek, thence up the said creek to the line of Ohio county; and that part of the said county lying south of the said line, shall be called and known by the name of Harrison, and all the residue of the said county shall retain the name of Monongalia; that a court for the said county of Harrison, shall be held by the justices thereof on the third Tuesday in every month, after such division shall take place, in such manner as is provided by law for other counties, and shall be by their commissions directed; that the justices to be named in the commission of the peace for the said county of Harrison, shall meet at the house of George Jackson, at Bush's Old Fort, on Buchanan river, in the said county, upon the first court-day after the said division shall take place, and having taken the oaths prescribed by law, and administered the oath of office to, and taken bond of, the sheriff according to law, proceed to appoint and qualify a clerk, and fix upon a place for holding courts in the said county at or as near the centre thereof, as the situation and convenience will admit of; and thence forth the said court, shall proceed to erect the necessary public buildings at such place; and until

2158 such buildings be completed, to appoint any place for holding courts as they shall think proper. Provided always, That

the appointment of a place for holding courts, and of a clerk, shall not be made unless a majority of the justices of the said county be present; where such majority shall have been prevented from attending by bad weather, or their being at the time out of the county, in such cases the appointment shall be postponed until some court day, when a majority shall be present; that the governor with advice of the council, shall appoint a person to be first sheriff of the said county, who shall continue in office during the term, and upon the same conditions, as is by law appointed for other sheriffs.

II. Provided always, and be it further enacted, That it shall be lawful for the sheriff of the said county of Monongalia, to collect and make distress for any public dues or officers fees, which shall remain unpaid by the inhabitants thereof, at the time such division shall take place, and shall be accountable for the same in like manner, as if this act had not been made, and that the court of the said county of Monongalia, shall have jurisdiction of all actions and suits in law or equity, which shall be depending before them at the time of the said division, and shall try and determine the same, and issue process and award execution thereon

III. And be it further enacted, That the court of the said county of Monongalia, shall account for and pay to the court of the said county of Harrison, all such sums of money as shall or may be paid by the inhabitants of the said county of Harrison, towards defraying the expence of erecting a courthouse and other public buildings in the said county of Monongalia. That in all elections of a senator, the said county of Harrison shall be of the same district with the said *said* county of Monongalia.

2159 Endorsed: Supreme Court U. S. No 1, Original. Oct. Term, 1907. Maryland *v.* West Virginia. Filed Oct. 15, 1907.

Office Supreme Court, U. S. Filed Oct. 15, 1907. James H. McKenney, Clerk.

2160 *Acts of Assembly, Virginia*, 1817–18, *Preston County.*

Chapter XXXII. An Act Dividing the County of Monongalia.

(Passed January 19th, 1818.)

I. Be it enacted by the General Assembly, That all that part of the county of Monongalia contained within the following bounds, to wit; beginning at the Pennsylvania line, near Fickle's, including the same, thence a straight line to where Cheat river breaks through the Laurel Hill, so as to include all the inhabitants of the Monongalia Glades settlement, including Samuel Price's and Henry Carother's, from thence, including Gandy's, to the Clarksburg road on the Laurel Hill where it descends; from thence a direct line to the junction of the Big and Little Sandy Creek, where the Randolph county line is; from thence, with Randolph county line, to the

Maryland line; from thence to the Pennsylvania line, and with the Pennsylvania line to the beginning, shall form a distinct and new county, and be called and known by the name of Preston county.

Endorsed: Supreme Court U. S. No. 1, Original, Oct. Term, 1907. Maryland *v.* West Virginia. Filed Oct. 15, 1907.
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2161 *Acts of Assembly*, 1855–6, *Chapter* 110, *Page* 95.

Chap. 110. An Act to Form the County of Tucker Out of a Part of Randolph County.

Passed March 7, 1856.

1. Be it enacted by the general assembly, that so much of the county of Randolph as is contained within the following boundary lines, to wit: Beginning at Fairfax's corner stone, and running thence with the division line between Hardy and Randolph counties, to the corner of Pendleton county; thence with a straight line to the fork of Red creek; thence down Red creek to its mouth on the Dry fork of Cheat river; thence by a straight line to the point where the Pheasant run road crosses Laurel hill; thence with the top of Laurel hill to the Barbour county line; thence with said Barbour county line to the corner of Preston county, and with the line of Preston county to the beginning—shall form one distinct and new county, and shall be called and known by the name of The County of Tucker; provided, that no part of the county of Preston shall hereafter be annexed to said county of Tucker without the consent of a majority of the voters of Preston county, ascertained at some general election

2. The court-house or seat of justice of said county of Tucker shall be located on the lands of Enoch Minear on the east side of Cheat river, and near the mouth of Mill run; which said seat of justice shall be known as Saint George.

Endorsed: Supreme Court U. S. No. 1, Original, Oct. Term, 1907. Maryland *v.* West Virginia. Filed Oct. 15, 1907.
Office Supreme Court, U. S. Filed Oct. 15, 1907. James H. McKenney, Clerk.

2162 *Session Acts, Virginia,* 1824-28.

Chapter 74. An Act to Confirm a Law, Passed at the Present Session of the General Assembly of Maryland, Entitled, "An Act to Incorporate the Baltimore and Ohio Rail Road Company."

(Passed March 8th, 1827.)

Whereas, an act has passed the Legislature of Maryland, entitled "An act to incorporate the Baltimore and Ohio Rail Road Company," in the following words and figures, viz: * * *

1. Therefore, be it enacted by the General Assembly, That the same rights and privileges shall be and are hereby granted to the aforesaid company within the territory of Virginia, as are granted to them within the territory of Maryland, the said company shall be subject to the same pains, penalties and obligations, as are imposed by said act, and the same rights, privileges and immunities which are reserved to the State of Maryland, or to the citizens thereof, are hereby reserved to the State of Virginia and her citizens; except that the said company shall not make or authorize to be made, any lateral road or roads within the territory of Virginia, without the consent of this Legislature; that the said road shall not strike the Ohio at a point lower than the mouth of the Little Kanawa on said river; that the words "or other property," in the seventeenth section of the above recited act, shall in no case be construed to extend to any property other than materials necessary for the construction or repair of said road, or other works or necessary buildings; and that in obtaining a right to any lands through which the contemplated railroad may be extended, or to any timber, gravel, stone or earth, which shall be necessary to the construction or repair of said road, or other works, or necessary, buildings within this Common-
2163 wealth, "The Baltimore and Ohio Railroad Company," shall proceed in the same manner as is prescribed in the seventh, eighth, ninth, tenth, and twelfth sections of an act entitled, "an act prescribing certain general regulations for the incorporation of turnpike companies," passed February the seventh, one thousand eight hundred and seventeen; Except also, that an injury, which may at any time be done within the limits of Virginia to the said road, other works or necessary buildings, shall at all times be punished according to the laws which may be in force in this Commonwealth.

2. This act shall commence from the passage thereof.

Endorsed: Supreme Court U. S. No. 1, Original, Oct. Term, 1907. Maryland *v.* West Virginia. Filed Oct. 15, 1907.

Office Supreme Court, U. S. Filed Oct. 15, 1907. James H. McKenney Clerk.

2164 *Laws of Maryland*, 1888.

Chapter 49, Page 50.

An Act to extend and enlarge the privileges and powers of the Piedmont and Cumberland Railway Company, incorporated under the act of assembly of this State, passed at the January session, eighteen hundred and seventy-six, chapter two hundred and forty-two, entitled "An act to provide for the creation and regulation of incorporated companies in the State of Maryland, and its supplements."

SECTION 1. Be it enacted by the General Assembly of Maryland, That the Piedmont and Cumberland Railway Company, a corporation duly incorporated in the year eighteen hundred and eighty-six, and whose articles of incorporation were duly recorded in the office of the secretary of state of Maryland under the provisions of the act of the general assembly, passed in January, eighteen hundred and seventy-six, chapter two hundred and forty-two, entitled "An act to provide for the creation and regulation of incorporated companies in the State of Maryland, for the purpose of constructing and maintaining and operating a railroad in Maryland, between a point in Allegany county, Maryland, opposite to the junction of the West Virginia Central and Pittsburgh Railway Company, with the Baltimore and Ohio Railroad Company above Piedmont, in West Virginia, to a point at or near the city of Cumberland, in said Allegany county, "shall, in addition to the powers granted under the acts of eighteen hundred and seventy-six, chapter two hundred and forty-two, and its supplements hereby ratified, have the power to unite, connect and consolidate with any railroad company or companies, either in or out of this state, so that the capital stock of the said companies, so united, connected and consolidated, respect-
2165 ively, may, at the pleasure of the directors, constitute a common stock, and the respective companies may thereafter constitute one company and be entitled to all the rights, privileges, immunities, which each of them possess, have and enjoy under and by virtue of their respective charters; provided, however, that nothing in this section or act contained shall be held or construed to exempt from taxation any property of either such company not so by law now exempted.

SEC. 2. And be it enacted, That the Piedmont and Cumberland Railway Company shall have the power to lease and operate any railroad or railroads, either in or out of this state, for the purpose of carrying on its business; and shall have power to lease or sell the railroad constructed by it to any other corporation created by the laws of this state, or any other state, or make any agreement or contract for the use of the said railroad, and of all or any of its property, on such terms and for such time as may be agreed upon between it and any other corporation created by the laws of this or

any other state, or between it and any individual or individuals as it may deem best for the interest of said company.

SEC. 3. And be it enacted, That in case of an agreement for the union, connection, or consolidation of the Piedmont and Cumberland Railway Company with any other railway company created by the laws of this state, or any other state, whose capital stock may be of the par value of one hundred dollars per each of its shares, then the said Piedmont and Cumberland Railway Company is hereby empowered, at the pleasure of its directors, to fix its shares of capital stock at the par value of one hundred dollars each, instead of fifty dollars each, as provided by the certificate of incorporation of said company, and by the general law of Maryland for the incorporation of railroad companies and such alteration of the par value of said shares, if deemed necessary by the board of directors, may be
2166 made by the exchange of two shares of the old for one share of the new stock, in such manner as the board of directors may direct.

SEC. 4. And be it enacted, That the said Piedmont and Cumberland Railway Company is hereby authorized and empowered to establish its principal office in the city of Baltimore.

SEC. 5. And be it enacted, That all acts and parts of acts inconsistent with this act be and the same are hereby repealed.

SEC. 6. And be it enacted, That this act shall take effect from the date of its passage.

Approved March 6, 1888.

Endorsed: Supreme Court U. S. No. 1, Original, Oct. Term, 1907. Maryland *v.* West Virginia. Filed Oct. 15, 1907.

Office Supreme Court, U. S. Filed Oct. 15, 1907. James H. McKenney, Clerk.

2167 *A History of the Valley of Virginia, by Samuel Kercheval, Second Edition, Revised and Extended by the Author,* 1850, *Chapter* 13.

Northern Neck of Virginia.

Charles II, king of England, granted to the ancestors of the late lord Fairfax all the lands lying between the head waters of the Rappahannock and Potomac to the Chesapeake bay. This immense grant included the territory now comprising the counties of Lancaster, Northumberland, Richmond, Westmoreland, Stafford, King George, Prince William, Fairfax, Louden Fauquier, Culpepper, Madison, Page, Shenandoah, Hardy, Hampshire, Morgan, Berkeley, Jefferson and Frederick. It is said that the first grant to the ancestors of Fairfax was only intended to include the territory in the Northern Neck east of the Blue ridge; but after Fairfax discovered that the Potomac river headed in the Allegany mountains, he returned to England, and instituted his petition in the court of king's bench for extending his grant into the Allegany mountains, so as to include the territory comprising the present counties of Page, Shen-

andoah, Hardy, Hampshire, Morgan, Berkeley, Jefferson and Frederick.—A compromise took place between Fairfax and the crown: but previous to the institution of Fairfax's suit, several individuals had obtained grants for large bodies of land west of the Blue ridge, from the colonial government of Virginia. In the compromise it was expressly stipulated that the holders of land, under what were then called the King's grants, were to be quieted in their right of possession.

Joist Hite and his partners had obtained grants for a large body. Fairfax, under the pretext that Hite, &c., had not complied with the terms of their grants, took it upon himself to grant away large quantities of these lands to other individuals. This arbitrary and high-handed proceeding on the part of his lordship, pro-
2168 duced a law suit, which Hite and his partners instituted in the year 1736, and in the year 1786 it was decided.—Hite and partners recovered a large amount of money for the rents and profits, and a considerable quantity of land.

The immense Fairfax estate has passed out of the hands of Fairfax's heirs. The lands (as observed in a preceding chapter) were granted by Fairfax in fee simple to his tenants, subject to, an annual rent of two shillings sterling per hundred acres. This small rent amounted in the aggregate to a very large sum; added to which, Fairfax required the payment of ten shillings sterling on each fifty acres, (what he termed composition money,) which was paid on issuing the grant.

About the year 1742 his lordship opened his office in the county of Fairfax for granting out the land. A few years after he removed to the county of Frederick and settled at what he called "Greenway-Court" about 12 or 14 miles southeast of Winchester, where he kept his land office during his life. He died in the autumn of 1781, very soon after the surrender of Cornwallis. It is said that as soon as he heard of the capture of Cornwallis and his army, he called to his servant to assist him to bed, observing, "It is time for me to die;" and truly the old man never again left his bed until he was consigned to the tomb. His body was deposited under the communion table in the then Episcopal church in Winchester.

In the year 1785 the Legislature of Virginia, passed an act which among other provisions (in relation to the Northern Neck) is the following:

"And be it further enacted, that the landholders within the said district of the Northern Neck shall be forever hereafter exonerated and discharged from composition and quitments, any law,
2169 custom or usage, to the contrary notwithstanding." * This act of the State freed the people from a vexatious and troublesome kind of taxation. Fairfax's representatives soon sold out their interest in his private estate in this country, and it is believed there is no part of this vast landed estate remaining in the hands of any branch of the Fairfax family. Chief Justice Marshall, the late Raleigh Colston, Esq., and the late Henry Lee, purchased the right of Fairfax's legatees (in England) to what is called the Manor of Leeds,† South Branch Manor, Patterson's Creek Manor, and various

other tracts of land of immense value—the most of which had been leased out for long terms or lives. This estate has been the cause of more litigation probably than any other estate in Virginia. Suits growing out of the case of Hite, &c., against Fairfax, are yet depending in our courts—and some of the tenants in the Manor of Leeds, have lately taken it in their heads that the Fairfax title is defective, and refuse to pay rents to the present claimants. This refusal has produced a lawsuit, which will doubtless be a long time pending.

This profligate manner of granting away lands in immense bodies was unquestionably founded in the most unwise and unjust policy. Instead of promoting speedy settlement and improvement of the country—instead of holding out to the bulk of society every possible encouragement to make the most speedy settlement and improvement of the new country—monop-lies in several instances were given, or pretended to be sold to a few favorites of the governing powers, whereby these favorites were enabled to amass vast estates, and to lord it over the great majority of their fellows men. Such are the blessings of kingly governments. But the people of this free and happy republic have abundant cause to rejoice and bless their God that this wretched kind of policy and high-handed injustice
2170 is done away, in the freedom and wisdom of our institutions, and that we have no longer our ears assailed, nor our understandings outraged, with the disgusting, high sounding title of "My lord," applied to poor frail human beings.

Lord Fairfax was the county lieutenant for Frederick for several years. On looking into the record of the proceedings of the court-martial, the author found the following entry:

"At a council of war, held for regulating the militia of Frederick county, in order to take such steps as shall be thought most expedient in the present critical conjuncture, the 14th day of April, 1756, present, the Rt. Hon. the lord Fairfax, county lieutenant; John Hite, major; John Lindsey, Isaac Parkins, Richard Morgan, Saml. Odell, Edward Rodgers, Jeremiah Smith, Thomas Caton,* Paul Long, captains.

"Proposals having been sent to the several captains of the militia, signed by the commanding officer of the said militia, and dated the 7th day of April, 1756, to get what volunteers they could encourage to go in search of the Indian enemy who are daily ravaging our frontiers and committing their accustomed cruelties on the inhabitants; and the aforesaid officers being met together, and finding the number of men insufficient to go against the enemy, it is considered that the men be discharged, being only fifteen.

"FAIRFAX."

From this it appears that lord Fairfax, among others, was an attentive officer in the time of the Indian wars. In truth it behooved his lordship to be active. He had more at stake, and the command of greater funds, than any other individual member of society. The Indians hostilities retarded the settlement of his large domain, and of course lessened his revenue. It is said that his lordship was re-

markable for his eccentricities and singularity of disposition
2171 and character, and that he had an insatiable passion for hoarding up English gold. †He never married; of course left no child to inherit his vast estate; but devised his property, or a large portion of it, to the Rev. Denny Martin, his nephew in England, on condition that he would apply to the parliament of great Britain for an act to authorize him to take the name of lord Fairfax. This was done; and Denny Lord Fairfax, like his uncle, never marrying, he devised the estate to Gen. Philip Martin, who, never marrying, and dying without issue, devised the estate to two old maiden sisters, who sold it to Messrs. Marshall, Colston and Lee.

He devised that part of his estate on which he resided, and which he called "Greenway-Court Manor," (containing ten thousand acres, with a large part of his slaves, &c.,) to another nephew, the late Col. Thomas Bryan Martin, who had resided with him for many years previous to his death. Col. Martin, like the others, never married. But he contrived to make a daughter by a Mrs. Crawford, who lord Fairfax had employed as a housekeeper. After Fairfax's death, Martin kept this woman as a mistress for several years; she died, and the daughter grew up and married the late Francis Goldart, who was a captain in the British service in the war of the revolution. She died soon after her marriage without issue. Martin gave Geldart about one thousand acres of land, part of Greenway-Court Manor," with a number of slaves, &c. Col Martin, after the death of his daughter, employed a white housekeeper, a Miss Powers, to whom he devised Greenway-Court, with one thousand acres of land, a number of slaves, and all the residue of his personal estate of every description (with the exception of part of his stock, slaves, and money.) Miss Powers, after the death of Martin, married the late Mr. W. Carnagy, by whom she had an only daughter, who is now the
2172 wife of the Rev. Mr. Thomas Kennerly. Col. Martin directed by his will the sale of all the residue of his estate, and the money arising from the sale to be remitted and paid to his two maiden sisters in England.* Shortly after his death an attempt was made to escheat the landed estate, and the suit was depending some sixteen or eighteen years before its final decision. The Court of Appeals at length decided the question in favor of Martin's legatees.

It is proper, before the subject of lord Fairfax's immense grant is dismissed, to inform the reader, that a few years after the war of the revolution an attempt was made to confiscate all that part of his landed estate devised to his nephew Denny Martin (afterwards Denny Lord Fairfax.) But Messrs Marshall, Colston and Lee, having purchased the estate, a compromise took place between them and the state government, for the particulars of which the reader is referred to the first volume of the Revised Code of the Laws of Virginia pp. 352, 353.

The sale of the estate of lord Fairfax by his legatees in England, and the devise and sale of the estate of the late Col. T. B. Martin, is the last chapter in the history of the Fairfax interest in the

Northern Neck, a territory comprising about one fourth of the whole of the present limits of Virginia.

The State of Maryland has lately set up a claim to a considerable tract of territory on the North-west border of Virginia, including a part of the Northern Neck. As the claim was pushed with much earnestness, the executive of our State appointed Charles James Faulkner, Esq., of Martinsburg, a commissioner to collect and embody the necessary testimony, on behalf of Virginia, on this interesting question. Mr. Faulkner's able report the author deems of sufficient interest to his readers generally to insert in this work? It follows:

2173 *Report of Charles James Faulkner Relative to the Boundary Line Between Virginia and Maryland.*

MARTINSBURG, *Nov.* 6, 1832.

SIR: In execution of a commission addressed to me by your excellency, and made out in pursuance of a joint resolution of the General Assembly of this State, of the 20th of March last, I have directed my attention to the collection of such testimony as the lapse of time and the nature of the inquiry have enabled me to procure touching "the settlement and adjustment of the western boundary of Maryland." The division line which now separates the two States on the west, and which has heretofore been considered as fixed by positive adjudication and long acquiescence, commences at a point where the Fairfax stone is planted, at the head spring of the Potomac river and runs thence due north to the Pennsylvania line. This is the boundary by which Virginia has held for near a century: it is the line by which she held in 1786, when the compact made by the Virginia and Maryland commissioners was solemnly ratified by the legislative authorities of the two States.

An effort is now made by the General Assembly of Maryland, to enlarge her territory by the establishment of a different division line. We have not been informed which fork of the South Branch she will elect as the new boundary, but the proposed *o*ine is to run from one of the forks of the South Branch, thence due north to the Pennsylvania terminus. It is needless to say that the substitution of the latter, no matter at which fork it may commence, would cause an important diminution in the already diminished territorial area of this State. It would deprive *is* of large portions of the counties of Hampshire, Hardy, Pendleton, Randolph and Preston,
2174 amounting in all to almost half a million of acres,—a section of the commonwealth which, from the quality of its soil, and the character of its population, might well excite the cupidity of a government resting her claims upon a less substantial basis than a stale and groundless pretension of more than a century's anti*g*uity. Although my instructions have directed my attention more particularly to the collection and preservation of the evidence of such living witnesses*ses* "as might be able to testify to any facts or circumstances in relation to the settlement and adjustment of the western boundary." I have consumed but a very inconsiderable portion

of my time in any labor or inquiry of that sort, for who indeed, now living, could testify to any "facts or circumstances" which occurred nearly a century since? And if such individuals were now living, why waste time in taking depositions as to those "facts" in proof of which the most ample and authentic testimony was taken in 1736, as the basis of a royal adjudication? I have consequently deemed it of more importance to procure the original documents where possible, if not, authentic copies of such papers as would serve to exhibit a connected view of the origin, progress and termination of that controversy with the crown, which resulted, after the most accurate and laborious surveys, in the ascertainment of those very "facts and circumstances" which are now sought to be made again the subjects of discussion and inquiry. In this pursuit I have succeeded far beyond what I had any ground for anticipation; and from the almost forgotten rubbish of past years, have been enabled to draw forth documents and papers whose interest may survive the occasion which redeemed them from destruction.

To enable your excellency to form a just conception of the weight and importance of the evidence herewith accompanying this
2175 report, I beg leave to submit with it a succinct statement of the question in issue between the governments of Virginia and Maryland, with some observations shewing the relevancy of the evidence to the question thus presented.

The territory of Maryland granted by Charles I. to lord Baltimore in June 1632, was described in the grant as "that region bounded by a line drawn from Watkins' point on Chesapeake bay to the ocean on the east; thence to that part of the estuary of Delaware on the north which lieth under the 40th degree, where New England is terminated; thence in a right line by the degree aforesaid, to the meridian of the fountain of the Potomac; thence following its course by its farther bank to its confluence." (Marshall's Life of Washington, vol. 1, chap. 11, pp. 78-81, 1st edition.)

It is plain that the western boundary of this grant was the meridian of the fountain of the Potomac, from the point where it cut the 40th degree of north latitude to the fountain of the river; and that the extent of the grant depended upon the question, what stream was the Potomac? So that the question now in controversy grows immediately out of the grant. The territory granted to lord Baltimore was undoubtedly within the chartered limits of Virginia: (See 1st charter of April 1606, sec. 4, and the 2d charter of May 1609, sec. 6, 1st Hen. Stat. at Large, pp. 58-88.)—And Marshall says that the grant "was the first example of the dismemberment of a colony, and the creation of a new one within its limits, by the mere act of the crown;" and that the planters of Virginia presented a petition against it, "which was heard before the privy council (of England) in July 1633, when it was declared that lord Baltimore shoulo retain his patent, and the petitioners their remedy at law. To this remedy they never thought proper to resort."

2176 Whether there be any record of this proceeding extant, I have never been able to learn. The civil war in England broke out about ten years after, and perhaps the journals of the pro-

ceedings of the privy council were destroyed. Subsequently to this, we are informed by Graham, the planters, "fortified by the opinion of eminent lawyers whom they consulted, and who scrupled not to assure them that the ancient patents of Virginia still remained in force, and that the grant of Maryland, as derogatory to them, was utterly void, they presented an application to the parliament complaining of the unjust invasion which their privileges had undergone." (Graham's History vol. 2, p. 12) But as the parliaments of those days were but the obsequious ministers of the crown, that application, it is presumed, likewise shared the fate of their former petition to the privy council.

The present claim of Maryland, then must be founded on the supposition that the stream which we call the Potomac was not; and that the stream now called the South Branch of the Potomac, was in fact the Potomac intended in the grant to lord Baltimore. I have never been informed which fork of the South Branch she claims as the Potomac (for there is a North and a South fork of the South Branch); neither have I been able to learn what is the evidence, or kind of evidence, on which she relies to ascertain that the stream which is now called the South Branch of the Potomac, but which at the date of the grant to lord Baltimore was not known at all, and when known, known for many years only as the Wappacomo, was the Potomac intended by lord Baltimore's grant. For this important geographical fact, I refer to the numerous early maps of the chartered limits of Virginia and Maryland, some of which are to be seen in the public libraries of Washington and Richmond.

The question, which stream was the Potomac? is simply a
2177 question which of them, if either, bore the name. The name is matter of general reputation. If there be anything which depends wholly upon general acceptation, which ought and must be settled by prescription, it is this question, which of these rivers was and is the Potomac? The accompanying papers, it is believed, will ascertain this fact to the satisfaction of every impartial inquirer.

In the twenty-first year of Charles II. a grant was made to lord Hopton and others, of what is called the Northern Neck of Virginia, which was sold by the other patentees to lord Culpeper, and confirmed to him by letters patent in the fourth year of James II. This grant carried with it nothing but the right of soil and the incidents of ownership; for it was expressly subjected to the jurisdiction of the government of Virginia. Of this earlier patent I believe there is no copy in Virginia. The original charter from James II. to lord Culpeper accompanies this report, marked No. 1. They are both recited in the colonial statute of 1736. (1 Rev. Code, ch. 89.) The tract of country thereby granted, was 'all that entire tract, territory and parcel of land, lying and being in America, and bounded by and within the heads of the rivers Tappahannock alias Rappahannock, and Quiriough alias Potomac rivers, the course of said rivers as they are commonly called and known by the inhabitants and description of their parts and Chesapeake bay."

As early as 1729, in consequence of the eagerness with which

lands were sought on the Potomac and its tributary streams, and from the difficulties growing out of conflicting grants from lord Fairfax and the crown, the boundaries of the Northern Neck proprietary became a subj-ct which attracted deep and earnest attention. At this time the Potomac had been but little explored; and although the stream itself above its confluence with the
2178 Shenandoah was known as the Cohongoroota, or Upper Potomac, it had never been made the subject of any very accurate surveys and examinations, nor had it yet been settled, by any competent authority, which of its several tributaries was entitled to be regarded as the main or principal branch of the river. It became important, therefore, to remove all further doubt upon that question.

In June 1729, the lieutenant-governor of Virginia addressed a communication to the lords commissioners of trade and plantation affairs, in which he solicits their attention to the ambiguity of the lord proprietor's charter, growing out of the fact that there were several streams which might be claimed as the head springs of Potomac river, among which he enumerates the Shenandoah, and expresses his determination "to refuse the suspension of granting of patents, until the case should be fairly stated and determined and according to the genuine construction of the proprietor's charter." This was followed by a petition to the king in council, agreed to by the house of burgesses of Virginia, in June, 1730, in which it is set forth, among other matters of complaint, "that the head springs of the Rappahannock and Potomac are not yet known to any of your majesty's subjects; that much inconvenience had resulted to grantees therefrom, and praying the adoption of such measures as might lead to its ascertainment to the satisfaction of all interested. Lord Fairfax, who, by his marriage with the only daughter of lord Culpeper, had now succeeded to the proprietorship of the Northern Neck, feeling it likewise due to his grantees to have the question relieved from all further difficulty, preferred his petition to the king in 1733, praying that his majesty would be pleased to order a commission to issue, for running out, marking, and ascertaining the bounds of his patent, according to the true intent and meaning of his
2179 charter. An order to this effect was accordingly directed by the king; and three commissioners were appointed on behalf of the crown, and the same number on behalf of lord Fairfax—The duty which devolved upon them was to ascertain, by actual examination and survey, the true fountains of the Rappahannock and Potomac rivers. To enable them more perfectly to discharge the important trust confided to them, they were authorized to summon persons before them, to take depositions and affidavits, to search papers, and employ surveyors, chaincarriers, markers, and other necessary attendants. The commissioners convened in Fredericksburg, on the 26th of September, 1736, and proceeded to discharge their duties, by taking depositions, appointing surveyors, and making every needful and requisite preparation for the survey. They commenced their journey of observation and survey on the 12th day of October, 1736, and finished it on the 14th of December, of the

same year; on which day they discovered what they marked and reported to be the first fountain of the Potomac river. Separate reports were made by the commissioners, which reports, with all the accompanying documents, papers, surveys, plans, &c., were, on the 21st of December, 1738, referred to the council for plantation affairs. That board, after hearing counsel, made a report on the 6th day of April, 1745, in which they state, "that having examined into the several reports, returns, plans, and other papers transmitted to them by the commissioners appointed on behalf of the crown, as likewise of lord Fairfax, and having been attended by council on behalf of your majesty, as likewise of lord Fairfax, and having heard all that they had to offer thereupon, and the question being concerning that boundary which ought to be drawn from the first head or spring of the river Rappahannock to the first head or spring of the river Potomac, the committee do agree humbly to report to your
2180 majesty as their opinion, that within the words and meaning of the letters patent, granted by king James II. bearing date the 27th day of September, in the fourth year of his reign, the said boundary ought to begin at the first spring of the South branch of the river Rappahannock, and that the said boundary be from thence drawn in a straight line northwest to the place in the Alleghany mountains where that part of the Potomac river, which is now called Cohongoroota, first rises." The Cohongoroota is known to be the stream which the Maryland writers term the North branch of the Potomac, but which is recognized in Virginia, and described on all the maps and surveys which I have ever yet seen, as the Potomac river, from its first fountain, where the Fairfax stone is located, to its confluence with the Shenandoah; there being, properly speaking, no such stream as the North branch of the Potomac. This report of the council for plantation affairs was submitted to the king in council on the 11th of April, 1745, and fully confirmed by him, and a further order made, directing the appointment of commissioners to run and mark the dividing line agreeably to his decision thus made. Commissioners were accordingly appointed, who, having provided themselves with surveyors, chain-carriers, markers, &c., commenced their journey on the 18th of September, 1746. On the 17th of October they planted the Fairfax stone at the spot which had been described and marked by the preceding commissioners as the true head spring of the Potomac river, and which has continued to be regarded, from that period to the present time, as the southern point of the western boundary between Maryland and Virginia. A joint report of these proceedings was made by the commissioners to the king; accompanied with their field notes; which report
2181 was received and ordered to be filed away among the records of his majesty's privy council. Thus terminated, after a lapse of sixteen years, a proceeding, which had for its object, among other matters, the ascertainment of the first fountain of the Potomac river, and which resulted in the establishment of that "fact" by a tribunal of competent jurisdiction. This decision has now been acquiesced in for near a century; and all topographical description and sketches of the country have been made to conform to it. I

say acquiesced in, for it is impossible to regard the varying, fluctuating legislation of Maryland upon the subject, at one session of her general assembly recognizing the line as now established, (see compact of 1785, Session Acts of 1803, 1818, and others,) at another authorizing the appointment of commissioners to adjust the boundary, as a grave resistance of its conclusiveness, or such a continual claim, as under the usages of international law, would bar an application of the principles of usucaption and prescription. (See Vattel, p. 251, lib. 2, cap. 4. Wolfius Jus. Nat. par. 3.)

Jurisdiction in all cases relating to boundaries between provinces, the dominion and proprietary government, is by the common law of England exclusively vested in the king and council. (1 Ves. sen. p. 447.) And notwithstanding it may be a question of boundary between the crown and the lord proprietor of a province, (such as that between lord Fairfax and the crown,) the king is the only judge, and is presumed to act with entire impartiality and justice in reference to all persons concerned, as well those who are parties to the proceeding before him, as others not parties who may yet be interested in the adjustment. (Vesey, *ib.*) Such is the theory and practice of the English constitution; and although it may
2182 not accord precisely with our improved conceptions of judicial practice, it is nevertheless the law which must now govern and control the legal aspect of the territorial dispute between Virginia and Maryland.

It does not appear by the accompanying papers, that Charles lord Baltimore, the then proprietor of Maryland, deputed as agent to attend upon his part in the examination and survey of the Potomac river. It is possible he conceived his interests sufficiently protected in the aspect which the controversy had then assumed between lord Fairfax and the crown. Certain it is, that it nowhere appears that he ever considered himself aggrieved by the result of that adjustment. That his government was fully apprised of what was in progress, can scarcely admit of a rational doubt. For it is impossible to conceive that a controversy so deeply affecting not only the interests of lord Baltimore, but all who were concerned in the purchase of land in that section of the country, and conducted with so much solemnity and notoriety, could have extended through a period of sixteen years without attracting the attention of the government of Maryland—a government ever jealous, because ever doubtful of the original tenure by which her charter was held. But had lord Baltimore even considered himself aggrieved by the result of that settlement, it is difficult now to conceive upon what ground he would have excepted to its justice, or question its validity. Could he have said that the information upon which the decision was founded was imperfect? Or that the proceedings of the commissioners were characterized by haste, favoritism or fraud? This, the proceedings of that board, still preserved, would contradict. For never was there an examination conducted with more deliberation, prosecuted with more labor, or scrutanized with a more jealous or anxious vigilance.

Could he have shewn that some other stream ought to have
2183 been fixed upon as the true head spring of the Potomac? This, it is believed, is impossible; for although it may be true that

the South branch is a longer stream, it nevertheless wants those more important characteristics which were then considered by the commissioners, and have been subsequently regarded by esteemed geographers as essential in distinguishing a tributary from the main branch of a river. (See Flint's Geography, vol. 2, p. 88.) Lastly, would he have questioned the authority of the crown to settle the boundaries of lord Fairfax's charter, without having previously made him a party to the proceeding? I have before shewn the futility of such an idea. Besides, this would have been at once to question *to* authority under which he held his own grant; for Baltimore held by virtue of an arbitrary act of the chartered rights of Virginia, and carried into effect not only without the acquiescence, but against the solemn and repeated remonstrances of her government. Was Virginia consulted in the "dismemberment" of her territory? Was she made a party to that proceeding, by which, "for the first time in colonial history, one new province was created within the chartered limits of another by the mere act of the crown?" But the fact is, that Charles lord Baltimore, who lived for six years after the adjustment of this question, never did contest the propriety of the boundary as settled by the commissioners, but from all that remains of his views and proceedings, fully acquiesced in its accuracy and justice. (See the treaty with the Six Nations of Indians, at Lancaster, in June 1744.)

The first evidence of dissatisfaction with the boundary as established, which the researches of the Maryland writers have enabled them to exhibit, are certain instructions from Frederick lord Baltimore (successor of Charles) to Governor Sharp, which were
2184 presented by the latter to his council in August, 1753. I have not been able to procure a copy of those instructions, but a recent historian of Maryland, and and ingenuous advocate of her present claim, referring to them, says, "His instructions were predicated upon the supposition that the survey might possibly have been made with the knowledge and concurrence of his predecessor, and hence he denies the power of the latter to enter into any arrangement as to the boundaries, which could extend beyond his life estate, or conclude those in remainder." (See M'Mahon's History of Maryland, p. 53.)

What were the precise limitations of those conveyances made by the proprietors of Maryland, and under which Frederick lord Baltimore denies the power of his predecessor to enter into any arrangement as to the boundaries, which could extend beyond his life estate. I am unable to say—my utmost researches have failed to furnish me with a copy of them—but they were so far satisfactory to his lordship's legal conceptions, as to induce him to resist even the execution of a decree pronounced by lord Hardwicke, in 1750, (1 Ves. sen pp. 444-46) upon a written compact as to boundaries, which had been executed by his predecessor and the Penns, in 1732. To enforce submission to that decree, the Penns filed a bill of reviver in 1754, and after an ineffectual struggle of six years, lord Baltimore was compelled with a bad grace to submit, and abide by the arrangement as to the boundaries which had been made by his predecessor.

To this circumstance, in all probability, was lord Fairfax indebted for his exemption from the further demands of the proprietor of Maryland. For lord Frederick, no ways averse to litigation, had by this time doubtless become satisfied that the power of his predecessor did extend beyond his life estate, and might even conclude those in remainder. Be that as it may, however, certain it is that the records of Maryland are silent upon the subject of this
2185 pretension, from September, 1753, until ten years subsequent to the compact between Virginia and Maryland in 1785.

An opinion prevails among our most distinguished jurists, resting solely upon traditionary information, that about 1761, Frederick lord Baltimore presented a petition to the king and council, praying a revision of the adjustment made in 1745, which petition was rejected, or after a short time abandoned as hopeless. If there ever was such a proceeding, I can find nothing of it in the archives of Virginia.

Be that as it may, it is certain that ever since 1745 lord Fairfax claimed and held, and the commonwealth of Virginia constantly to this day has claimed and held by the Cohongoroota, that is by the northern branch, as the Potomac, and whatever lord Baltimore or his heirs, and the State of Maryland may have claimed, she has held by the same boundary. There was no reason why lord Fairfax, being in actual possession, should have controverted the claim of lord Baltimore, or Maryland. If lord Baltimore, or Maryland, ever controverted the boundary, the question must, and either has been decided against them, or it must have been abandoned as hopeless. If they never controverted it, the omission to do so, can only be accounted for, upon the supposition that they knew it to be hopeless. If Maryland ever asserted the claim—seriously asserted it I mean—it must have been before the revolution, or at least during it, when we all know, she was jealous enough of the extended territory of Virginia. The claim must have had its origin before the compact between the two states, of March 1785, (1 Rev. Code, ch. 18). We then held by the same boundary by which we now hold; we held to what we called and now call the Potomac; she then held to what we call the Potomac. Is it possible to doubt that this is the
2186 Potomac recognized by the compact? That compact is now forty-seven years old.

I have diligently inquired whether, as the Potomac above the confluence of the Shenandoah was called the Cohongoroota, the stream now called the South branch of the Potomac ever had any peculiar name, known to and established among the English settlers—for it is well known it bore the Indian name of Wappacomo. I never could learn that it was known by any other name, but that which it yet bears, the South branch of the Potomac. Now that very name of itself sufficiently evinces, that it was regarded as a tributary stream of another river, and that river the Potomac; and that the river of which the South branch was the tributary, was regarded the main stream.

But let us for a moment concede that the decision of the king in council was not absolutely conclusive of the present question;

let us concede that the long acquiescence of Maryland in that adjustment has not precluded a further discussion of its merits; let us even suppose the compact of 1785 thrown out of view, with all the subsequent recognitions of the present boundary by the legislative acts of that state, and the question between the two streams now for the first time presented as an original question of preference;—what are the facts upon which Maryland would rely to show that any other stream, than the one bearing the name, is entitled to be regarded as the main branch of the Potomac? It were idle to say that the South branch is the Potomac, because the South branch is a longer or even larger stream than the North branch which Virginia claims to hold by. According to that sort of reasoning, the Missouri, above its confluence with the Mississippi, is the Mississippi, being beyond comparison the longer and larger stream. The claim of the South branch, then, would rest solely upon its great
2187 strength. In opposition to this it might be said that the Cohongoroota is more frequently navigable that it has a larger volume of water—that the valley of the South branch is, in the grand scale of conformation, secondary to that of the Potomac—that the South branch has not the general direction of that river, which it joins nearly at right angles—that the valley of the Potomac is wider than that of the South branch, as is also the river broader that the other. And lastly that the course of the river and the direction of the valley are the same above and below the junction of the South branch. (See letters accompanying this report, No. 26.) These considerations have been deemed sufficient to establish the title to the "father of waters," to the name which he has so long borne. (See History and Geography of Western States, vol. 2, Missouri.) And as they exist in an equal extent, so should they equally confirm to pre-eminence which the Cohongoroota has now for near a century so proudly and peacefully enjoyed.

The claim of Maryland to the territory in question, is by no means so reasonable as the claim of the great Frederick of Prussia to Silesia, which that prince asserted and maintained, but which he tells us himself he never would have thought of asserting, if his father had not left him an overflowing treasury and a powerful army.

With this brief historical retrospect, presented as explanatory of the accompanying testimony, I will now lay before your excellency, in chronological order, a list of the documents and papers referred to in my preceding observations.

No. 1. Is the original grant from king James II. to Thomas lord Culpeper, made on the 27th September, in the fourth year of his reign.

No. 2. Copy of letter from Major Gooch, lieutenant governor of Virginia, to the lords commissioners for trade and plantations, dated
at Williamsburg, June 29, 1729.

2188 No. 3. Petition to the king in Council, in relation to the Northern Neck grants and their boundaries, agreed to by the house of burgesses, June 30th, 1730.

No. 4. The petition of Thomas lord Fairfax, to his majesty in

council, preferred in 1733, setting forth his grants from the crown, and that there had been divers disputes between the governor and council in Virginia and the petitioner, and his agent Robert Carter, Esq., touching the boundaries of the petitioner's said tract of land, and praying that his majesty would be pleased to order a commission to issue for running out, marking and ascertaining the bounds of the petitioner's said tract of land.

No. 5. A copy of an order of his majesty in his privy council, bearing date the 29th of November, 1733, directing William Gooch, Esq. lieutenant-governor of Virginia, to appoint three or more commissioners (not exceeding five) who in conjunction with a like number to be named and deputed by the said lord Fairfax, are to survey and settle the marks and boundaries of the said district of land, agreeably to the terms of the patent under which the lord Fairfax claims.

No. 6. Copy of the commission from lieutenant-governor Gooch to William Byrd of Westover, John Robinson of Piscataway, and John Grymes of Brandon, appointing them commissioners on behalf of his majesty, with full power, authority &c.

(I have not been able to meet with a copy of the commission of lord Fairfax to his commissioners—they were William Beverly, William Fairfax and Charles Carter. It appears by the accompanying report of their proceedings, that "his lordship's commissioners delivered to the king's commissioners an attested copy of their commission," which having been found upon examination more restricted in its authority than that of the commissioners of
2189 the crown, gave rise to some little difficulty which was subsequently adjusted.)

No. 7. Copy of the instructions on behalf of the right honorable lord Fairfax, to his commissioners.

No. 8. Minutes of the proceedings of the commissioners appointed on the part of his majesty and the right honorable Thomas lord Fairfax, from their first meeting at Fredericksburg, September 25th, 1736.

No. 9. Original correspondence between the commissioners during the years 1736 and 1737, in reference to the examination and survey of the Potomac river.

No. 10. The original field notes of the survey of the Potomac river, the mouth of the Shenandoah to the head spring of said Potomac river, by Mr. Benjamin Winslow.

No. 11. The original plat of the survey of the Potomac river.

No. 12. Original letter from John Savage, one of the surveyors, dated January 17, 1737, stating the grounds upon which the commissioners had decided in favor of the Cohongoroota over the Wappacomo, as the main branch of the Potomac. The former, he says, is both wider and deeper than the latter.

No. 13. Letter from Charles Carter, Esq. dated January 20, 1737, exhibiting the result of a comparative examination of the North and the South branches of the Potomac. The North Branch at its mouth, he says, is twenty-three poles wide, the south branch sixteen, &c.

No. 14. A printed map of the Northern Neck of Virginia, situate betwixt the rivers Potomac and Rappahannock, drawn in the year 1737, by William Mayo, one of the king's surveyors, according to his actual survey in the preceding year.

No. 15. A printed map of the course of the rivers Rappa-
2190 hannock, and Potomac, in Virginia, as surveyed according to order in 1736 and 1737, (supposed to be by lord Fairfax's surveyors.)

No. 16. A copy of the separate report of the commissioners appointed on the part of the crown. (I have met with no copy of the separate report of lord Fairfax's commissioners.)

No. 17. Copy of lord Fairfax's observations upon and exceptions to the report of the commissioners of the crown.

No. 18. A copy of the report and opinion of the right honorable the lords of the committee of council for plantation affairs, dated 6th April, 1745.

No. 19. The decision of his majesty in council, made on the 11th of April, 1745, confirming the report of the council for plantation affairs, and further ordering the lieutenant-governor of Virginia to nominate three or more persons, (not exceeding five,) who, in conjunction with a like number to be named and deputed by lord Fairfax, are to run and mark out the boundary and dividing line, according to his decision thus made.

No. 20. The original commissioners from Thomas lord Fairfax to the honorable Wm. Fairfax, Charles Carter and William Beverly, Esqrs., dated the 11th June, 1745.

(Col. Joshua Fry, Col. Lunsford Lomax, and Maj. Peter Hedgman, were appointed commissioners on the part of the crown.)

No. 21. Original agreement entered into by the commissioners, preparatory to their examination of the Potomac river.

No. 22. The original journal of the journey of the commissioners, surveyors, &c., from the head spring of the Rappahannock to the head spring of the Potomac, in 1746.

(This is a curious and valuable document, and gives the only authentic narrative now extant of the planting of the Fairfax stone.)

2191 No. 23. The joint report of the commissioners appointed as well on the part of the crown as of lord Fairfax, in obedience to his majesty's order of 11th April, 1735.

No. 24. A manuscript map of the head spring of the Potomac river, executed by Col. George Mercer of the regiment commanded in 1756 by General Washington.

No. 25. Copy of an act of the general assembly of Maryland, passed February 19, 1819, authorizing the appointment of commissioners on the part of that state, to meet such commissioners as may be appointed for the same purpose by the commonwealth of Virginia, to settle and adjust, by mutual compact between the two governments, the western limits of that state and the commonwealth of Virginia, to commence at the most western source of the North branch of the Potomac river, and to run a due north course thence to the Pennsylvania line.

No. 26. Letters from intelligent and well informed individuals, residing in the county watered by the Potomac and its branches, addressed to the undersigned, stating important geographical facts bearing upon the present controversy.

There are other papers in my possession, not listed nor referable to any particular head, yet growing out of and illustrating the controversy between lord Fairfax and the crown; these are also herewith transmitted.

There are other documents again not at all connected with my present duties, which chance has thrown in my way, worthy of preservation in the archives of the state. Such, for example, as the original "plan of the line between Virginia and North Carolina, which was run in the year 1728, in the spring and fall, from the sea to Peter's creek, by the Hon. William Byrd, Wm. Dand-
2192 ridge and Richard Fitzwilliams, Esqrs. commissioners, and Mr. Alex'r Irvine and Mr. Wm. Mayo, surveyors—and from Peter's creek to Steep rock creek, was continued in the fall of the year 1749, by Joshua Fry, and Peter Jefferson." Such documents, should it accord with the view of your excellency, might be deposited with "the Virginia Historical and Philosophical Society," an institution of recent origin, yet founded upon the most expended views of public utility, and which is seeking by its patriotic appeals to individual liberality, to wrest from the ravages of time the fast perishing records and memorials of our early history and institutions.

With sentiments of regard, I am, very respectfully, your obedient servant,

CHARLES JAS. FAULKNER.

To John Floyd, Esq. Governor of Virginia:

After perusing this masterly exposition, the reader will be at a loss to conceive on what grounds Maryland can rest her claims to the territory in question, and what authorities she can adduce to support them. The controversy is still pending, and in addition to Mr. Faulkner, Col. John B. D. Smith, of Frederick, and John S. Gallaher, Esq., of Jefferson have been appointed commissioners on the part of Virginia.

2193

* In the year 1736, Fairfax entered a caveat against Hite, &c., alledging that the lands claimed by them were within the bounds of the Northern Neck, and consequently his property. This was the beginning of the controversy, and led to the suit instituted by Hite and partners against him. All the parties died before the suit was decided. Hite in 1731 purchased from John and Isaac Vanmeter their right or warrant for locating 40,000 acres; Hite and McKay obtained a warrant for locating 100,000 acres more in their own names; and in order to obtain settlers, took in Robert Green and William Duff as partners. Hence the firm of Joist Hite, Robert McKay, Robert Green, and William Duff. Green and Duff settled in Culpeper county, and are the ancestors of the families of those names in that county, and of Gen. Duff Green, of Washington City.

† Lord Fairfax made a donation to the Episcopal society, of a lot of land, upon which a large stone building was erected as a place of worship. The lot is in the center of the town; and, attached to the church, was a large burial ground, in which a great number of bodies were deposited. The Epis-

copal society lately sold at auction this ancient building and lot for twelve thousand dollars. The purchasers caused the skeletons to be removed, and there are now three elegant brick houses erected on the lot. With the money arising from the sale the Episcopal society purchased a lot on Boscowen and Washington streets, and have built a splendid new church. It is to be regretted that no account was taken of the number of skeletons removed. The author inquired of several persons, who were concerned in the removal, no one of whom could give any account of the number. It is probable there were not less than 1,000—the skeleton of Lord Fairfax among them.

* See Revised Code of the Laws of Virginia, vol. i, p. 351.

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† The Manor of Leeds is located in the counties of Culpeper, Fauquier and Frederick, and contains about 150,000 acres; the South Branch Manor in Hardy, 55,000; Patterson's creek in Hampshire, 9,000 acres. Goony-Run Manor, which adjoins the Manor of Leeds, contains about 13,000 acres, and lies chiefly in Shenandoah county.

* Capt. Jeremiah Smith, the same who defeated the party of fifty Indians, and killed the French captain, noticed in a preceding chapter.

† Some four or five years ago the slaves of the Rev. Mr. Kennerly, the present proprietor of "Greenway-Court," in quarrying stone, not far from Fairfax's ancient dwelling-house, found about $250 worth of gold coin, supposed to have been hidden there by his lordship.

Endorsed: Supreme Court U. S. No. 1 Original, Oct. Term 1907, Maryland *v.* West Virginia. Filed Oct. 15, 1907. Office Supreme Court, U. S. Filed Oct. 15, 1907. James H. McKenney, Clerk.

2195

Laws of Maryland, 1886.

Chapter 295, Page 499.

An Act to Provide for the Further Publication of the Archives of Maryland.

Whereas the Maryland Historical Society has complied with all the provisions of the acts of Assembly of eighteen hundred and eighty-two, chapter one hundred and thirty-eight, and eighteen hundred and eighty-four, chapter four hundred and twenty-nine, relating to the preservation, arrangement and publication of the archives and ancient documents pertaining to the history of the State of Maryland, and has, under said acts, published three volumes of the same, and made considerable progress in the preparation for publication of the fourth volume; and

Whereas it is proper that the publication of said archives be continued, with reasonable diligence and care, under the direction of said society; therefore,

Section 1. Be it enacted by the General Assembly of Maryland, That the sum of two thousand dollars for each year, for the period of two years from this date, be and the same is hereby appropriated, and shall be paid to the said Maryland Historical Society out of any funds in the Treasury not otherwise appropriated; which sum shall be paid, one thousand dollars on the first days of June and December, of the years eighteen hundred and eighty-six, to eighteen hundred and eighty-seven, both inclusive.

2196 SEC. 2. And be it enacted, That the archives of Maryland published by the said Society, with the funds herein provided, shall be subject to the provisions of the act of eighteen hundred and eighty-two, chapter one hundred and thirty-eight, and the Society shall make to each General Assembly the report thereby required; provided, that the said Maryland Historical Society is hereby authorized to have enough copies of each volume printed to supply the members of the Society and its exchanges, by paying therefor the actual cost of paper, press-work and binding the same; and provided, further, that ten copies of each volume of the archives published by said Maryland Historical Society shall be bound in cloth and deposited in the State Library for the use thereof, and that the said Society be and hereby is authorized, without being required to pay therefor, to send a copy of each of the columes that have been or may be published, to the respective State Libraries of the several States of the Union.

SEC. 3. And be it enacted, That this act shall take effect from the date of its passage.

Approved April 7, 1886.

Endorsed: Supreme Court U. S. No. 1, Original, Oct. Term, 1907. Maryland *v.* West Virginia. Filed Oct. 15, 1907.

Office Supreme Court, U. S. Filed Oct. 15, 1907. James H. McKenney, Clerk.

2197 (*Governor Horatio Sharpe to Caecilius Calvert.*)

20th August, 1753, Transmitted by Capt. Fannin.

"It is to be observed that the Temporary Line is drawn 15 miles south of the most southern part of Philadelphia, which takes away from his Lordship much good Land; It would be a great advantage & it is much to be wished you could continue the Line due North (After it has touched the Circle) to the 40° 00″ at least to 3956. A Line due West in that Latitude will run a little North of one of the Bendings of the river Potowmack, much depends thereon in respect to the Boundarys with Lord Fairfax for by what I have yet seen I doubt that Branch which runs about S. ° West by the Allegany Mountains will be deemed the Fountain Head of Potowmack & is to be desired if you could obtain said Latitude of 39° 56′ & his Lordship will even then be a considerable looser according to his First grant nor will you then be within 15 miles of Philadelphia altho' to the Northw'd of the Latitude thereof. It is impossible to fix how far North would be a good Boundary for Maryland on account of the uncertainty of the Draughts and impracticability of making observations and remarks necessary for that Advice I can only say what you know that the more Northw'd the Better."

Page- 1 & 2 Archives of Maryland, Vol. 6.

A true copy.

ANNE BURTON JEFFERS,
State Librarian. [SEAL.]

Endorsed: Sharpe to Calvert. August 20th, 1753. Supreme Court U. S. No. 1, Original, Oct. Term, 1907. Maryland *v.* West Virginia. Filed Oct. 15, 1907.

Office Supreme Court, U. S. Filed Oct. 15, 1907. James H. McKenney, Clerk.

2198

(*Sharpe to Calvert.*)

Sept. 14, 1753, Transmitted by Mr. Jennings.

The North Line will not touch the Heads of any Rivers, nor will the Circle round Newcastle as run by Mr. Daker in 1732 affect the Head of the Bay or any of the Rivers as far as He is capable of judging & supposes that a due North Line will take in Warwick Town & be a Secant of the Circle & not a Tangent but opinions you see & a few I am affraid inaccurate Observations Are the best guides we as yet have & I see no probability but of remaining still in the Dark unless the Penns will give free liberty to execute what the Council have thought necessary to be performed comply with what is mentioned in the Report of the Council. Mr. Jennings has taken some pains to make Himself Master of this Affair & As he will be able to give you more light into it then I as yet am able to do I must beg leave to refer you to Him. Mr. Cressop gave it As his Opinion to the Council that the Temporary Line is to the Northw'd of any Bendings of the River Potowmack & that the South Branch runs 60 or 80 Miles farther West than the Spring Head of the Northern Branch upon wch. representation of His by Advice of Council I have wrote the following Lettr. to Ld. Fairfax."

(See below.)

If you can obtain from Messrs. Penn to go to the Latitude of 40° upon Susquehana in order to run a West Line thence for your Northern Boundary You may give up so much of the Eastern Side of that River as Lies North of the Temporary Line;" * * *" And several plans & Observations being laid before Us We are of opinion that so much uncertainty appears at present as well with respect to the Heads of Rivers running into Chesepeak Bay as to the Circle of Newcastle & the Latitude of the most northern Bend of Potowmack River, that We would not presume to advise any

2199 particular Boundary unless a due North Line could be run from the Middle of such an East & West line as may be agreed on between the Proprietaries across the Peninsula as also a due West Radius run from the centre of the Circle of Newcastle & the Latitude of the most Northern Bend of Potomack be taken by observation.

Page- 5 & 6, Archives of Maryland, Vol. 6.

A true copy.

ANNE BURTON JEFFERS,
State Librarian. [SEAL.]

Endorsed: Sept. 14th, 1753. Sharpe to Calvert. Supreme Court U. S. No. 1, Original, Oct. Term, 1907. Maryland *v.* West Virginia. Filed Oct. 15, 1907.

Office, Supreme Court, U. S. Filed Oct. 15, 1907. James H. McKenney, Clerk.

2200 *Sharpe to Lord Fairfax.*

"Lord Baltimore was pleased to Charge me with an enquiry into the True Meridian and Place of the Fountain head of Potowmack; The best Information I have been hitherto able to procure gives me Reason to believe there has been a mistake in fixing the spring head to the North Branch since the Length with other circumstances more properly denotes the Southern Branch commonly called Wappacomo to be the Main & principal Course of that River. I am the more willing to be persuaded of the truth of this Representation from the considerable Advantage that will accrue to your Lordship. That Branch I am Informed has never been thoroughly explored and traced to its source, but I flatter myself with having your Lordship's Concurrance for such an examination into its Course Length Width and Depth as may bring this Matter to a nearer degree of Certainty and if that should appear to be the fountain head of Potowmack River I shall not Question but your Lordship will be for taking such measures as may ascertain the mutual Limits of the two Proprietorships agreeable to the Direction and True Intention of their Respective Charters."

Page- 6 & 7, Archives of Maryland, Vol. 6.

A true copy.
ANNE BURTON JEFFERS,
State Librarian. [SEAL.]

Endorsed: Sharpe to Lord Fairfax. Supreme Court U. S. No. 1, Original, Oct. Term, 1907. Maryland *v.* West Virginia. Filed Oct. 15, 1907.

Office Supreme Court, U. S. Filed Oct. 15, 1907. James H. McKenney, Clerk.

2201 *Fairfax to Sharpe.*

FREDERICK, *Sept. 24th,* 1753.

I am intirely that the South would be much to my Advantage, and therefore think it improper for me to Appear therein, and that the Governor of Virginia and Your Excellency should transact that Affair if his Lordship should obtain his demand, I must insist upon a new Line between his Majesty and me to the Southward."

Page 7, Archives of Maryland, Vol. 6.

A true copy.
ANNE BURTON JEFFERS,
State Librarian. [SEAL.]

Endorsed: Fairfax to Sharpe. September 24th, 1753. Supreme Court U. S. No. 1, Original, October Term, 1907, Maryland *v.* West Virginia. Filed Oct. 15, 1907.

Office Supreme Court, U. S. Filed Oct. 15, 1907. James H. McKenney, Clerk.

2202 (*Sharpe to Calvert.*)

NOVEMBER 29TH, 1753.

"My intent to examine the two Branches of Potowmack I have hinted to the Governor of Virginia & writ to Col° Cressop to know whether He will undertake that Business or not, & return me an accurate Description of their Courses, Rapidity & Depth & the longitudinal Difference of the places of the Spring Heads, but I suppose the severity of the Winter will hinder Him from proceeding on those enquiries this three or four months at least."

Page 14, Archives of Maryland, Vol. 6.

A true copy.

ANNE BURTON JEFFERS,
State Librarian. [SEAL.]

Endorsed: Sharpe to Calvert. Nov. 29th, 1753. Supreme Court U. S. No. 1, Original, Oct. Term, 1907. Maryland *v.* West Virginia. Filed Oct. 15, 1907.

Office Supreme Court, U. S. Filed Oct. 15, 1907. James H McKenney, Clerk.

2203 (*Calvert to Sharpe.*)

LONDON, *January 5th,* 1754.

"My Lord approves of Yr. Endeavour with Lord Fairfax's in Virginia to fix the Branch of Potowmack River by another Branch run South West, it will enlarge & extend Maryland much more than the Branch run'g NorthWest, & will Advantage Lord Fairfax as to his Particular Tract of Land, yet it will be very Difficult to gain the Colony of Virginia consent to resettle, as it will be the Losser by alter^{g} the Course of the River, w^{h} has been Settled by Order of the Crown, & of w^{h} the late Lord Baltimore had Notice & was present with Lord Fairfax at the Hearing before the Council, whose Report the King Confirm^{d} & Accordingly the Spring Head has been Determined by the Virginia Com-iss'rs *Ex parte* with Maryland Com-iss'rs Lord Baltimore Pray^{g} Thom. Lord Fairfax & the Colony of Virginia's Chart of the Courses of the Rivers Rapphannock & Potomack the latter the fix'd Boundary South bet: Maryland & Virginia Accord^{g} to the Order of the King & Council in 1736 & 1737. His Lord^{ps} desires you will obtain Mr. Cresapes opinion certain by observation of the North Temporary Line. His Majesty's Line by advice of his Council bet: Maryland & Pensilvania of w^{h} Line I Learn Mr.

Cresap thinks is North of the highest Bend & Flow of Potomack River. If the Bend is over the Line the Pensilvanians will claim Water Passage to the Spring Head & on that River; it is of Consequence to know upon Settl[g] the North Temporary Line.

Page- 18 & 19, Archives of Maryland.

A true copy:
ANNE BURTON JEFFERS,
State Librarian. [SEAL.]

2204 Endorsed: Calvert to Sharpe. Jany. 5th, 1754. Supreme Court, U. S. No. 1, Original. Oct. Term, 1907. Maryland *v.* West Virginia. Filed Oct. 15, 1907.
Office Supreme Court, U. S. Filed Oct. 15, 1907. James H. McKenney, Clerk.

2205 (*Calvert to Sharpe.*)

LONDON, *April 17th,* 1754.

Page 44th, *et seq.,* on page 49, the following:

"By Lord Fairfax's Letter to you, his Lordship Declines having to Do with any Re-Settlement of the Course of Potowmack River. The Branch called the South Branch which you seem to apprehend will be much more Beneficial to Maryland, as in Length South Westward, will depend on Proof, as it's Fountain Head instead of the Spring Head of the said River, determined by the Virginia Commissioners in 1736 and 1737. If the South Branch runs as you apprehend, it will certainly be of great Advantage to the encrease of Maryland, and also may be to Lord Fairfax's Tract of Land by the Spring head of Potomack lying more westward than the Determined Head of Potomack as above settled. However you ought before you make an Attempt, to be well Grounded How the Inclinations of the Governor, the Virginians and Lord Fairfax Stand, to a New Settlement of the Course and Fountain of Potomack with Maryland. If they oppose, the Crown is most likely will side with them. The Tryal of the South Branch of Potomack as to it's advantages as may turn out, His Lordship is not against Mr. Cressap's Essay therein; Provided he does not bring upon Him too great cost thereby, of which, if you find it absolutely necessary to send him, you must Bargain with him Reasonably."

Page 49, Archives of Maryland, Vol. 6.

A true copy:
ANNE BURTON JEFFERS,
State Librarian. [SEAL.]

Endorsed: Calvert to Sharpe. April 17th, 1754. Supreme Court U. S. No. 1, Original. Oct. Term, 1907. Maryland *v.* West Virginia. Filed Oct. 15, 1907.
Office Supreme Court, U. S. Filed Oct. 15, 1907. James H. McKenney, Clerk.

2206 (*Sharpe to Calvert.*)

JUNE 6TH, 1754.

"It is owing to Colº Cressap's Absence from home among the Virginians on Ohio that I am not yet able to comply with your Requisition concerning the Latitude of the most Northern Bend of Potomack.

I some weeks since writ two Letters desiring him to return me a Copy of his Map of that River signed & authenticated which I will transmit with the Description of Distances & Bearings of the River Heads on the Eastern Shore as soon as the Surveyors make their Returns which I expect in about 3 weeks or a month at farthest.

P. S. I have this instant received a Letter from Colº Cresop with the Plan & Certificate concerning the North Branch of Potowmack & the Temporary Line as run by him."

Page- 70 & 72, Archives of Maryland, Vol. 6.

A true copy:
ANNE BURTON JEFFERS,
State Librarian. [SEAL.]

Endorsed: Sharpe to Calvert, June 6th 1754. Supreme Court U. S. No. 1 Original. Oct. Term 1907. Maryland *v.* West Virginia. Filed Oct. 15, 1907. Office Supreme Court U. S. Filed Oct. 15, 1907. James H. McKenney, Clerk.

2207 (*Calvert to Sharpe.*)

DECEMBER 10TH, 1754.

"Col. Cresap's Map of the North Bend of Potomack River with respect to the North Temporary Line removes the doubt of the Bend touchᵍ the Line there being South of the Line Considerable distance of Country between the Line & the Bend, Admitting extensive passage to the Spring head of that River. The observation in 1669 at Newcastle & also the Act of Virginia concernᵍ the North Boundary is of service as it Points the opinion of that Collony about the North Line of Maryland, Out of whᵗ the latter was taken."

Page 130, Archives of Maryland.

A true copy:
ANNE BURTON JEFFERS,
State Librarian. [SEAL.]

Endorsed: Calvert to Sharpe. Dec. 10th, 1754. Supreme Court U. S. No. 1, Original. Oct. Term, 1907. Maryland *v.* West Virginia. Filed Oct. 15, 1907.

Office Supreme Court, U. S. Filed Oct. 15, 1907. James H. McKenney, Clerk.

2208 Maryland Laws, Acts of 1781, Secs. I and II, Chapter 20.

An Act to Appropriate Certain Lands to the Use of the Officers and Soldiers of this State, and for the Sale of Vacant Lands."

Whereas there are large tracts of land within this state reserved by the late proprietaries, which may be applied in discharge of the engagement of lands made to the officers and soldiers of this state; and the granting the other vacant lands in this state would promote population, and create a fund towards defraying the public burden:

II. Be it enacted, by the General Assembly of Maryland, That all the lands within this state, in Washington county, westward of Fort Cumberland, and for which located warrants have not issued, or surveys been made, under common warrants, and are now *bona fide* the property of any subject of this or any of the United States, and on which the money has been actually paid, shall be and are hereby appropriated to discharge the engagement of lands heretofore made to the officers and soldiers of this state, and the residue to the use of the public, as the general assembly shall hereafter direct; and no grant shall issue on any survey made in virtue of such warrants before the order of the General Assembly.

2209 *Resolutions of April Session*, 1787 (*Maryland*).

Resolved, That the Governor and council be requested to appoint and employ some skilful person to lay out the manors, and such parts of the reserves and vacant lands, belonging to this state, lying to the westward of Fort Cumberland, as he may think fit and capable of being settled and improved, in lots of fifty acres each, bounded by a fixed beginning and four lines only, unless on the sides adjoining elder surveys; that the beginning of each lot be marked with marking irons, or otherwise, with the number thereof, and that a fair book of such surveys, describing the beginning of each lot by its situation, as well as number, be returned and laid before the next general assembly; that a brief note of the improvements which may happen to be on any lot, and the name of the person, if any settled thereon, be inserted at the foot of the certificate of survey thereof, and that the reasonable expence of such surveys be paid by this state.

Resolved, That the governor and council be requested to cause the auditor-general, or other proper officer, to make out an accurate and fair list of the officers and soldiers who are entitled to bounties of land under the promises of this state, and to lay the same before the next general assembly.

Endorsed: Supreme Court U. S. No. 1, Original. Oct. Term, 1907. Maryland *v.* West Virginia. Filed Oct. 15, 1907.

Office Supreme Court U. S. Filed Oct. 15, 1907. James H. McKenney, Clerk.

2210 Maryland Laws, Acts of 1788, Chapter XLIV, Passed Dec. 23.

An Act to dispose of the reserved lands westward of Ford Cumberland, in Washington county, and to fulfil the engagements made by this state to the officers and soldiers of the Maryland line in the service of the United States.

Whereas by an act, entitled, An act for recruiting the quota of troops of this state in the American army, and furnishing them with clothing and other necessaries, passed at a session of assembly begun and held at the city of Annapolis on Friday the thirty-first day of October, in the year of our Lord one thousand seven hundred and seventy-seven, and by sundry subsequent acts, it was provided, that a bounty of fifty acres of land should be granted to each able bodied recruit who should enlist and faithfully serve for three years in the American army; and by the said first recited act it was provided, that the said bounty should be paid to each recruit, or his legal representative, at the expiration of three years from the time of enlistment, in such manner as the general asembly should thereafter direct; and by the said act, and other subsequent acts, it was provided, that a bounty of one hundred acres of land, to be procured and laid out in such manner and place within this state as the legislature thereof should thereafter direct, should be given to every such recruiting officer, or his legal representative, who should enlist twenty able bodied effective recruits within the times in the said acts respectively specified, and also a bounty of fifty acres of land, to be procured as aforesaid, to every recruiting officer who should enlist and deliver twenty able bodied effective recruits according to the terms of the said acts: And whereas by an act, entitled, An act to appropriate certain lands to the use of the officers and soldiers of this state, and for the sale of vacant lands, passed at a session of assembly begun and held at the city of Annapolis on Monday the fifth of November, in the year of our Lord one thousand seven hundred and eighty-one, all the lands within this state in Washington county, westward of Fort Cumberland, except as in the said act is excepted, were appropriated to discharge the engagement of lands heretofore made to the officers and soldiers of this state, and
2211 the residue to the use of the public, as the general assembly should thereafter direct: And whereas, in pursuance of a resolve of the general assembly, at April session, seventeen hundred and eighty-seven, authorizing the governor and council to appoint and employ some skilful person to lay out the manors, and such parts of the reserves and vacant lands belonging to this state, lying to the westward of Fort Cumberland, as he might think fit and capable of being settled and improved, in lots of fifty acres each, Francis Deakins was appointed and employed by the governor and council for that purpose, and has finished the said survey, and has returned a general plot of the county westward of Fort Cumberland, on which four thousand one hundred and sixty-five lots of fifty acres each are laid off, besides sundry tracts which have been patented, distinguishing on the plot those lots which have been settled and improved from those which remain uncultivated; and the said Francis Deakins

has also returned two books, entitled A and B, in which are entered certificates of all the lots before mentioned: And whereas it appears to this general assembly, that there are three hundred and twenty-three families settled on six hundred and thirty-six of the aforesaid lots, which they have improved and cultivated;

II. Be it enacted, by the General Assembly of Maryland, That a preference be given to the said settlers to purchase the said six hundred and thirty-six lots by them respectively settled, not exceeding the quantities registered and noted by the surveyor in the books aforesaid, at not less than five nor more than twenty shillings per acre, one third part thereof to be paid on the first day of September next, one other third on the first day of September, seventeen hundred and ninety, and the remaining third in twelve months thereafter, in current money; and that the price of provisions furnished and services rendered in assistance to the said Francis
2212 Deakins in surveying the said lands, be discounted out of the first or any other payment to be made by the said settlers.

III. And be it enacted, That in default of any payment to be made by any of the said settlers on the day on which the same ought to be made as aforesaid, the land unpaid for shall be liable to proclamation in the usual manner by any citizen of this state.

IV. And be it enacted, That for the ease and convenience of the people, a proper person or persons, not to exceed the number three, be appointed commissioner or commissioners by the governor and council, who shall go into the neighbourhood, and have power to decide all disputes which may arise concerning preemption, and shall value the said lands, those of the best quality at not more than twenty shillings, and those of the worst at not less than five shillings per acre, and all those of an intermediate according to their quality, having regard to the prices aforesaid.

V. And, Whereas according to the most accurate account that can now be rendered by the auditor-general, it appears, that there has been about the number of two thousand four hundred and seventy-five soldiers entitled under the several acts of the legislature to the said bounty of lands, and that there ought to be about one hundred lots set apart to fulfil the engagements of lands to recruiting officers, Be it enacted, That two thousand five hundred and seventy-five of the aforesaid lots, lying in the most fertile part of the county, and contained in the following limits, to wit, beginning at the mouth of Savage river, and running with the north branch of Patowmack river to the head thereof, then north with the present supposed boundary line of Maryland until the intersection of an east line to be drawn from the said boundary line, with a north course from the mouth of Savage river, will include the number of lots aforesaid, to be distributed by lot among the said soldiers and recruiting
2213 officers, and their legal representatives, by the commissioner or commissioners hereafter to be appointed by the governor and council as aforesaid.

VI. And be it enacted, That part of the remaining lots be distributed by lottery among the officers, and the representatives of the officers, of the Maryland line, who served to the end of the war, who were deranged by any of the reforms of the army, who were killed

or died of their wounds received in battle, those who were disabled from further service by wounds received, and in consequence thereof retired, and those who died a natural death while in the service with the army; each officer or his representative, to have four lots.

VII. And be it enacted, That the lots so granted to the officers aforesaid, shall be adjacent to those herein before directed to be distributed among the soldiers, and shall be contained within the following limits, to wit, by extending the aforesaid north course from the mouth of Savage river until its intersection with an east line to be drawn from the aforesaid supposed boundary line of Maryland, will include the necessary number, allowing to each officer, or his representative, four lots as aforesaid.

VIII. And be it enacted, That the said lots shall be distributed by lot among the said officers and their representatives, by the commissioner or commissioners to be appointed by the governor and council as aforesaid, each ticket to contain four lots contiguous to each other, or as nearly so as may be.

IX. And be it enacted, That the lot on which William Howell lives be secured to the legal representatives of —— Howell, son of the said William, which said son was a soldier in the Maryland line, and died in the service of his country; and that in case the said son shall not have left a legal representative, entitled by law to the said lot, the same be secured to the aforesaid William Howell, his heirs and assigns, forever.

2214 X. And be it enacted, That the remainder of the said lots be sold for any kind of specie certificates of this state, to be paid at the time of sale.

XI. And, whereas it appears to this general assembly, that ten assistant surveyors have been employed by the said Francis Deakins in the execution of the said survey seven hundred and seventy-five days, to wit, Henry Kemp one hundred and twenty days, Daniel Cresap fifty-eight days, Laurence Bringle ninety-eight days, Benjamin Brice eighty-eight days, John Tomlinson fifty-eight days, Jonas Hogmire eighty-four days, Thomas Orm seventy days, John Hooker, ninety-two days, John Lynn fifteen days, William Hoye ninety-two days, Be it enacted, That there be allowed to each of the said assistants the sum of ten shillings current money per day.

XII. And be it enacted, That as to the lands patented or taken up within the manors and the reserves aforesaid, the general assembly cannot with propriety give orders for any disposition thereof, but that the cases of each ought to be stated by the governor and council, and the attorney-general's opinion taken, so that the claim of the state may be prosecuted or relinquished, as law and justice may require.

XIII. And be it enacted, That any of the said lands, not herein before appropriated, and any other lands in this state now vacant, and to effect which no warrant hath issued, be liable to be taken up in the usual manner by warrant, at the rate of three shillings and nine-pence current money per acre, to be paid to the treasurer of the western shore in the proportions and within the times required by the act to appropriate certain lands to the use of the officers and soldiers of this state, and for the sale of vacant lands.

XIV. And be it enacted, That the privilege of roads and waters through all the said lands be reserved to the public.

XV. And be it enacted, That the line to which the said
2215 Francis Deakins has laid out the said lots, is, in the opinion of the general assembly, far within that which this state may rightfully claim as its western boundary; and that at a time of more leisure the consideration of the legislature ought to be drawn to the western boundaries of this state, as objects of very great importance.

XVI. And be it enacted, That the said general plot and books of certificates be lodged in the land office, and that the said books of certificates of the four thousand one hundred and sixty-five lots aforesaid, be considered, to all intents and purposes, as record books of the land office.

XVII. And be it enacted, That the necessary expences attending the said survey shall be ascertained by the committee of claims at the next session of assembly, and that the orders given by the said Francis Deakins in favour of persons who furnished provisions and performed services in the execution of the said survey, shall be receivable in payment of the lands to be valued to the settlers aforesaid, the amount of the said orders to be debited to the said Francis Deakins, in addition to the six hundred pounds received from the treasurer, and by him to be accounted for.

XVIII. And be it enacted, That there be allowed to the said Francis Deakins, for his trouble in completing the said work, making out the plots and registering the certificates aforesaid, the sum of two hundred pounds current money.

XIX. And be it enacted, That the commissioner or commissioners to be appointed as aforesaid, as soon as may be, give six weeks notice in the Maryland Gazette, and Baltimore Journal, of the time and place when and where a distribution of the aforesaid lands, in pursuance of the directions of this act, among the officers and soldiers entitled as aforesaid, shall take place; and the auditor-general shall furnish the said commissioner or commissioners with a list of the officers and soldiers entitled as aforesaid, and no draught shall
2216 be made for any officer or soldier, unless the name of the officer or soldier shall appear in the list to be furnished by the auditor-general as aforesaid.

XX. And be it enacted, That after the said draught shall have taken place, the name of the officer and soldier shall be endorsed on the ticket containing the number or numbers, which shall be written in words at length, drawn by or for such officer or soldier by the said commissioner or commissioners, and thereupon such officer or soldier, or their representative or representatives, shall have an estate in fee-simple in the lot or lots respectively drawn, without any patent, deed or grant, to be issued for that purpose.

XXI. And be it enacted, That on payment of the valuation to be made in pursuance of the directions of this act, by any of the settlers who shall be adjudged by the commissioner or commissioners aforesaid to be entitled to the pre-emption, a patent shall issue for the land, according to the determination of the said commissioner or commissioners, to the settler, or his representative or representa-

tives, by the register of the land office, he or they paying the usual fees of office.

XXII. And be it enacted, That any purchaser of any of the said lots to be sold in pursuance of this act, on payment of the purchase money, shall be entitled to a patent from the register of the land office, on paying the usual fees of office.

XXIII. And be it enacted, That the said commissioner or commissioners shall be entitled to receive ten shillings current money per day for every day he shall be actually employed in making the distributions aforesaid, deciding disputes concerning pre-emption, and selling the lands as aforesaid.

XXIV. And be it enacted, That the said commissioner or commissioners, before he or they act as such, shall take an oath well and faithfully to discharge the duties required and enjoined by this act, according to the best of his skill and judgment.

2217 XXV. And be it enacted, That the said commissioner or commissioners shall make a record of all valuations by them made, and of all the lots distributed among the officers and soldiers aforesaid, and of all lots sold by them, in virtue of this act, and return the same to the register of the land office, to be by him safely kept.

Endorsed: Supreme Court U. S. No. 1, Original, Oct. Term, 1907. Maryland *v.* West Virginia. Filed Oct. 15, 1907.

Office Supreme Court, U. S. Filed Oct. 15, 1907. James H. McKenney, Clerk.

2218–2225 Revised Code of 1819, Chapter 4, Pages 33, 34, 35, 36, 37, 38, 39, 40, and 41.

The Constitution or Form of Government, agreed to and resolved upon by the delegates and representatives of the several Counties and Corporations of Virginia.

(Unanimously adopted, June 20, 1776.)

* * * * * * *

2226 21. The territories contained within the charters erecting the colonies of Maryland, Pennsylvania, North and South-Carolina, are hereby ceded, released, and for ever confirmed to the people of those colonies respectively, with all the rights of property, jurisdiction and government, and all other rights whatsoever which might at any time heretofore have been claimed by Virginia, except the free navigation and use of the rivers, Potomac and Pohomoke, with the property of the Virginia shores or strands bordering on either of the said rivers, and all improvements which have been or shall be made thereon. The western and northern extent of Virginia shall in all other respects stand as fixed by the charter of King James the first, in the year one thousand six hundred and nine, and by the public treaty of peace between the courts of Great Britain and France, in the year one thousand seven hundred and sixty-three; unless, by act of Legislature, one or more territories shall hereafter

be laid off and governments established westward of the Allegheny mountains. And no purchase of lands shall be made of the Indian natives, but on behalf of the public, by authority of the General Assembly.

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2227 Endorsed: Supreme Court U. S. No. 1, Original, Oct. Term, 1907. Maryland *v.* West Virginia. Filed Oct. 15, 1907.

Office Supreme Court, U. S. Filed Oct. 15, 1907. James H. McKenney, Clerk.

2228 Revised Code of 1819, Chapter 18, Pages 53, 54, 55, 56, and 57.

An act to approve, confirm, and ratify the Compact made by certain Commissioners appointed by the General Assembly of the State of Maryland, and Commissioners appointed by this Commonwealth.

(Passed January 3, 1786.)

1. Whereas, at a meeting of the Commissioners appointed by the General Assembly of the State of Maryland and Virginia, to wit, Daniel of St. Thomas Jenifer, Thomas Stone, and Samuel Chase, Esquires, on the part of the State of Maryland, and George Mason and Alexander Henderson, Esquires, on the part of the State of Virginia, at Mount-Vernon, in Virginia, on the 28th day of March, in the year one thousand seven hundred and eighty-five, the following compact was mutually agreed to by the said Commissioners:

First. The Commonwealth of Virginia disclaims all right to impose any toll, duty, or charge, prohibition or restraint, on any vessel whatever sailing through the Capes of Chesapeake Bay to the State of Maryland, or from the said State through the said Capes outward bound; and agrees that the waters of Chesapeake Bay, and the river Pocomoke, within the limits of Virginia, be forever considered as a common high-way, free for the use and navigation of any vessel belonging to the said State of Maryland, or any of its citizens, or carrying on any commerce to or from the said State, or with any of its citizens; and that every such vessel inward or outward bound, may freely enter any of the rivers within the Commonwealth of Virginia as a harbour, or for safety against an enemy, without the payment of port duties, or any other charge; and also, that the before-mentioned parts of Chesapeake Bay, and Pocomoke River, be free for the navigation of vessels from one part of the State of Maryland to another.

2229 Second. The State of Maryland agrees that any vessel belonging to the Commonwealth of Virginia, or any of its citizens, or carrying on commerce to or from the said Commonwealth or with any of its citizens, may freely enter any of the rivers of the

said State of Maryland, as a harbour, or for safety against an enemy, without the payment of any port duty, or other charge.

Third. Vessels of war, the property of either State, shall not be subject to the payment of any port duty, or other charge.

Fourth. Vessels not exceeding forty feet keel, nor fifty tons burthen, the property of any citizen of Virginia or Maryland, or of citizens of both States, trading from one State to the other only, and having on board only the produce of the said States, may enter and trade in any part of either State, with a permit from the Naval-Officer of the district from which such vessel departs with her cargo, and shall be subject to no port charges.

Fifth. All merchant vessels (except such as are described in the fourth article) navigating the River Potowmack, shall enter and clear at some Naval-Officer on the said river, in one or both States, according to the laws of the State in which the entry shall be made. And where any vessel shall make an entry in both States, such vessel shall be subject to tonnage in each State only in proportion to the commodities carried to, or taken from such State.

Sixth. The River Potowmack shall be considered as a common high-way, for the purpose of navigation and commerce to the citizens of Virginia, and Maryland, and of the United States, and to all other persons in amity with the said States, trading to or from Virginia or Maryland.

Seventh. The citizens of each State respectively shall have full property in the shores of Potowmack River adjoining their
2230 lands, with all emoluments and advantages thereunto belonging, and the privilege of making and carrying out wharves and other improvements, so as not to obstruct or injure the navigation of the river; but the right of fishing in the river shall be common to, and equally enjoyed by the citizens of both States; Provided, That such common right be not exercised by the citizens of the one State, to the hindrance or disturbance of the fisheries on the shores of the other State; and that the citizens of neither State shall have a right to fish with nets or seines on the shores of the other.

Eighth. All laws and regulations which may be necessary for the preservation of fish, or for the performance of quarantine, in the river Potowmack, or for preserving and keeping open the channel and navigation thereof, or of the River Pocomoke, within the limits of Virginia, by preventing the throwing out ballast, or giving any other obstruction thereto, shall be made with the mutual consent and approbation of both State.

Ninth. Light-houses, beacons, buoys, or other necessary signals, shall be erected, fixed, and maintained upon Chesapeake Bay, between the sea and the mouths of the rivers Potowmack and Pocomoke, and upon the river Potowmack, at the expense of both States: If upon Potowmack River, at the joint and equal charge of both States; and if upon the before-mentioned part of Chesapeake Bay, Virginia shall defray five parts, and Maryland three parts of such expense; and if this proportion shall in future times be found unequal, the same shall be corrected. And for ascertaining the proper

places, mode and plans for erecting and fixing light-houses, buoys, beacons, and other signals, as aforesaid, both States shall, upon the application of either to the other, appoint an equal number of Commissioners, not less than three nor more than five from each State, to meet at such times and places as the said Commissioners, or a major part of them, shall judge fit, to fix upon the proper places, mode and plans for erecting and fixing such light-houses,
2231 beacons, or other signals, and report the same, with an estimate of the expense, to the Legislatures of both States, for their approbation.

Tenth. All piracies, crimes, or offences committed on that part of Chesapeake Bay which lies within the limits of Virginia, or that part of the said Bay where the line of division from the South point of Potowmack River, (now called Smith's Point) to Watkin's Point, near the mouth of Pocomoke River, may be doubtful, and on that part of Pocomoke River within the limits of Virginia, or where the line of division between the two states upon the said river, is doubtful, by any persons not citizens of the Commonwealth of Virginia, against the citizens of Maryland, shall be tried in the Court of the State of Maryland which hath legal cognizance of such offence: and all piracies, crimes, and offences committed on the beforementioned parts of Chesapeake Bay and Pocomoke River, by any persons not citizens of Maryland, against any citizen of Virginia, shall be tried in the Court of the Commonwealth of Virginia which hath legal cognizance of such offence: All piracies, crimes, and offences committed on the said parts of Chesapeake Bay and Pocomoke River, by persons not citizens of either State, against persons not citizens of either State, shall be tried in the Court of the Commonwealth of Virginia having legal cognizance of such offences; And all piracies, crimes and offences committed on the said parts of Chesapeake Bay and Pocomoke River, by any citizen of the Commonwealth of Virginia, or of the State of Maryland, either against the other, shall be tried in the Court of that State of which the offender is a citizen. The jurisdiction of each State over the River Potowmack, shall be exercised in the same manner as is prescribed for the before-mentioned parts of Chesapeake Bay and Pocomoke River, in every respect, except in the case of piracies, crimes, and offences committed by persons not citizens of either State,
2232 upon persons not citizens of either State, in which case the offenders shall be tried by the Court of the State to which they shall first be brought. And if the inhabitants of either State shall commit any violence, injury, or trespass, to or upon the property or lands of the other, adjacent to the said Bay or Rivers, or to any person upon such lands, upon proof of due notice to the offender to appear and answer, any Court of Record, or Civil Magistrate of the State where the offence shall have been committed, having jurisdiction thereof, may enter the appearance of such person, and proceed to trial and judgment, in the same manner as if legal process had been served on such offender; and such judgment shall be valid and effectual against the person and property of such offender, both in the State where the offence shall have been committed, and also

in the State where the said offender may reside, and execution may be issued by the Court, or magistrate, giving such judgment, in the same manner as upon judgments given in other cases; or upon a transcript of such judgment, properly authenticated, being produced to any Court or Magistrate, of the State where such offender may reside, having jurisdiction within the State, or County where the offender may reside, in cases of a similar nature, such Court, or Magistrate, shall order execution to issue upon such authenticated judgment in the same manner, and to the same extent, as if the judgment had been given by the Court or Magistrate, to which such transcript shall be exhibited.

Eleventh. Any vessel entering into any port on the River Potowmack, may be libelled, or attached for debt, by process from the State in which said vessel entered. And if the commercial regulations of either State shall be violated by any person carrying on commerce in Potowmack or Pocomoke Rivers, the vessel owned or commanded by the person so offending, and the property on board may be seized, by process from the State whose laws are of-
2233 fended, in order for trial. And if any person shall fly from Justice, in a civil or criminal case, or shall attempt to defraud creditors by removing his property, such person, or any property so removed, may be taken on any part of Chesapeake Bay, or the rivers aforesaid, by process of the State from which such person shall fly, or property be removed; and process from the State of Virginia may be served on any part of the said rivers, upon any person, or property of any person not a citizen of Maryland, indebted to any citizen of Virginia, or charged with injury having been by him committed; and process from the State of Maryland may be served on any part of the said rivers, upon any person or property of any person, not a citizen of Virginia, indebted to a citizen of Maryland, or charged with injury by him committed. And in all cases of trial in pursuance of the jurisdiction settled by this compact, citizens of either State shall attend as witnesses in the other, upon a summons from any Court, or Magistrate, having jurisdiction, being served by a proper officer of the county where such citizen shall reside.

Twelfth. The citizens of either State having lands in the other, shall have full liberty to transport to their own State, the produce of such lands, or to remove their effects, free from any duty, tax, or charge whatsoever, for the liberty to remove such produce or effects.

Thirteenth. These articles shall be laid before the Legislatures of Virginia and Maryland, and their approbation being obtained, shall be confirmed and ratified by a law of each State, never to be repealed, or altered by either, without the consent of the other.

2. And whereas this General Assembly are of opinion that the said compact is made on just and mutual principles for the true interest of both governments, and the same having been confirmed by the General Assembly of the State of Maryland: Be it therefore enacted, That the said compact is hereby approved, confirmed,
2234 and ratified by the General Assembly of Virginia, and that every article, clause, matter and thing therein contained,

shall be obligatory on this State and the citizens thereof, and shall be forever faithfully and inviolably observed and kept by this government, and all its citizens, according to the true intent and meaning of the said Compact; and the faith and honour of this State is hereby solemnly pledged and engaged to the General Assembly of the State of Maryland, and the government and citizens thereof, that this law shall never be repealed, or altered, by the Legislature of this Commonwealth, without the consent of the State of Maryland.

Endorsed: Supreme Court, U. S. No. 1, Original, Oct. Term, 1907. Maryland *v.* West Virginia. Filed Oct. 15, 1907.
Office, Supreme Court, U. S. Filed Oct. 15, 1907. James H. McKenney, Clerk.

2235 Maryland Laws, Acts of 1818, Chapter 206 Passed Feb. 19, 1819.

An Act for Settling the Western Limits of this State and the Dividing Line and Boundary Between this State and the Commonwealth of Virginia.

SEC. 1. Be it enacted by the General Assembly of Maryland, That the governor, by and with the advice and consent of the council, be and he hereby is authorized to appoint three commissioners on the part of this State, to meet such commissioners as may be appointed for the same purpose by the commonwealth of Virginia, to settle and adjust, by mutual compact between the two governments, the western limits of this state, and the dividing line and boundary between this state and the commonwealth of Virginia, to commence at the most western source of the north branch of the Potomac river, and to run a due north course to intersect the line between this state and the state of Pennsylvania, and also to settle and adjust as aforesaid any claim of this state, or of the said commonwealth of Virginia, to territory within the limits of the other; and the commissioners appointed as aforesaid, are required to report their proceedings in virtue of their appointment and authority, to the general assembly of this state, at the session next after the same (several words missing) for confirmation or rejection.

2. And whereas, sundry citizens of this state may hold lands in virtue of patents granted by the commonwealth of Virginia, before the divisional line shall have been settled and adjusted between the two states, and as it is proper that all inhabitants on either side of the boundary line, so to be settled and adjusted, who shall have obtained patents for their lands in Virginia or Maryland, should have their titles confirmed in which ever state they may happen to fall, Be it enacted, That any person or persons holding lands within the limits of this state, which shall have been granted and patented by Virginia before the settlement and adjustment of the said divisional line, and which, before the running and settling the
2236 divisional line aforesaid, shall have been considered as lying within the limits of Virginia, and subject to the jurisdiction

thereof, but which by the settlement and adjustment of the said divisional line shall be found to lie within this state, shall be at liberty to take out and receive patents from the land office of this State; and after the confirmation of the settlement and adjustment of the said divisional lines as aforesaid, the register of the land office of the western shore is hereby empowered and directed, on application of any of the above described land-holders, and upon their producing their Virginia patents, or authenticated copies, which shall be lodged in the land office, to grant patent or patents for the lands expressed in such original grant or grants, and the person or persons thus receiving patents in exchange shall not be liable to pay any purchase or caution money, or be liable to any charge or demand whatsoever, except the common fees of office.

3. Provided nevertheless, and be it enacted, That the right, title and estate, acquired by any person or persons of in and to any such lands, under and in virtue of any kind of grant from the proprietary of Maryland, or from this state, prior to the right, title or estate acquired by any person or persons claiming under a grant from Virginia, shall prevail; and in all and every case the prior title acquired by any person or persons in and to any such lands, under any grant or patent, whether granted by Virginia, or Maryland, or by or under either of them, shall prevail and have the preference.

4. And be it enacted, That no such grant as aforesaid shall extend, or be deemed, construed or taken to extend, to the right of any grantee or grantees, and those claiming under them, to any lands, tenements, hereditaments, which are situate, lying or being within this state, which have been at any time and in any manner heretofore granted by or under the authority of the late proprietaries, or by this State, and are now in the actual possession or occupation of all, every or any of the tenants or occupiers of the said lands,
2237 hereditaments and premises, nor to the estate, right, title or interest, of such tenants or occupiers, or any of them, in or to the said lands and premises, or any part thereof, but it shall and may be lawful to and for all and every of such tenants and occupiers of the said lands and premises, and every part thereof, their and every of their heirs and assigns, from time to time, and at all times hereafter, to hold and enjoy the said lands and premises, and every part thereof, for and during all and every their several and respective estates and interests in the same and every of them, any thing herein before contained to the contrary thereof in anywise notwithstanding.

4. And be it enacted, That the governor of this state be requested to transmit without delay, to the governor of Virginia, a copy of this act, in order to its being laid before the legislature of that commonwealth, and at the same time to communicate the wish of this general assembly that a similar act may be passed by the general assembly of Virginia.

5. And be it enacted, That the appointment of commissioners required by this act shall not be made until the legislature of Virginia shall pass a law with provisions similar to those contained in this act.

Endorsed: Supreme Court U. S. No. 1, Original, Oct. Term, 1907. Maryland *v.* West Virginia. Filed Oct. 15, 1907.
Office Supreme Court, U. S. Filed Oct. 15, 1907. James H. McKenney, Clerk.

2338 Acts of Assembly 1821–22, Chapter 14, Pages, 15, 16, & 17.

Chapter 14. An Act to Settle the Western Limits of this State, and the Dividing and Boundary Line Between this State and the Commonwealth of Maryland.

(Passed February 28, 1822.)

1. Be it enacted by the General Assembly of Virginia, That the governor, by and with the advice and consent of the council, be, and he is hereby authorized to appoint three commissioners on the part of this state to meet such commissioners as may be appointed for the same purpose by the commonwealth of Maryland, to settle and adjust, by mutual compact between the two governments, the Western limits of this state and the dividing and boundary line between this state and the commonwealth of Maryland: to commence at Fairfax's stone on the head waters of the north branch of the Potowmack river, and to run a due north course to intersect the line between this state and the state of Pennsylvania; and the commissioners appointed as aforesaid, are required to report their proceedings in virtue of their appointment and authority, to the general Assembly of this State, at the session next after the same shall have been concluded, for confirmation or rejection.

2. And whereas sundry citizens of this state may hold lands in virtue of patents, granted by the commonwealth of Maryland before the divisional line shall have been settled and adjusted between the two states; and as it is proper that all inhabitants on either side of the boundary line, so to be settled and adjusted, who shall
2239 have obtained patents for their lands in Virginia or Maryland, should have their titles confirmed in whichever state they may happen to fall; Be it therefore enacted, That any person or persons holding lands within the limits of this state, which shall have been granted and patented by Maryland before the settlement and adjustment of the said divisional line, and which, before the running and settling the divisional line aforesaid, shall have been considered as lying within the limits of Maryland, and subject to the jurisdiction thereof, but which by the settlement and adjustment of the said divisional line, shall be found to lie within this State, shall be at liberty to take out and receive patents from the land office of this state. And after the confirmation of the settlement and adjustment of the said divisional line as aforesaid, the register of the land office is hereby empowered and directed, on application of any of the above described land holders, upon their producing their Maryland patents, or authenticated copies thereof, which shall be lodged in the land office, to grant a patent or patents for the lands expressed in such original grant or grants; and the person or persons

thus receiving patents in exchange, shall not be liable to pay any fee or charge, save only the common fees of office: Provided, nevertheless, and be it enacted, That in all cases the prior title acquired by any person or persons, in, and to any such lands under any grant or patent, whether granted by Maryland or Virginia, or by, or under either of them, shall prevail and have the preference.

3. And be it enacted, That no grant as aforesaid shall extend or be deemed, construed or taken, to extend to the right of any grantee, or grantees and those claiming under them, to any
2240 lands, tenements, or hereditaments, which are situated, lying or being within this state, which have been at any time, and in any manner heretofore granted, by or under the authority of this commonwealth; any thing herein before contained to the contrary thereof notwithstanding.

4. And be it enacted, That the commissioners appointed as aforesaid, shall receive four dollars per day, while employed in settling and adjusting the aforesaid divisional line; and they are hereby authorized to employ a surveyor, two chain-carriers, and one or more persons to mark the said line. And it shall be the duty of the said commissioners to ascertain the number of days the surveyor shall be so employed, and certify the same to the auditor of public accounts, who shall thereupon issue a warrant in favour of such surveyor for four dollars per day for his services: the said commissioners shall also certify to the auditor of public accounts, the names of the chain-carriers and markers employed, the number of days each has been so employed, and such daily allowance as to them may seem just; whereupon the auditor of public accounts, upon application, shall issue warrants in favor of such chain-carriers and markers.

5. Be it further enacted, That all expenses to be incurred in running and settling the aforesaid divisional line shall be paid out of any money in the treasury of this commonwealth not otherwise appropriated.

6. This act shall be in force from and after the passage thereof.

Endorsed: Supreme Court U. S. No. 1, Original, Oct. Term, 1907. Maryland *v.* West Virginia. Filed Oct. 15, 1907.

Office Supreme Court, U. S. Filed Oct. 15, 1907. James H. McKenney, Clerk.

2241 Maryland Laws, Acts of 1825, Resolution No. 82, Passed March 7, 1826.

Whereas it is all important to this state, and to the citizens thereof, on its western limits, that the dividing line and boundary between this state and the state of Virginia, should be settled and ascertained: Therefore,

Resolved, That the governor and council be, and they are hereby authorized and requested to appoint three commissioners on the part of this state, to meet such commissioners as may be appointed on the part of the commonwealth of Virginia, to settle and adjust by mutual compact between the two governments, the western limits of this state, and the dividing and boundary lines between this state, and

the commonwealth of Virginia, and also to settle and adjust as aforesaid, any claim of this state or of the commonwealth of Virginia to territory, within the limits of the other state.

Resolved, in case of disagreement between the commissioners appointed on the part of this state, and on the part of the commonwealth of Virginia, the executive of this state shall request the governor of the state of Delaware, for the time being to appoint an umpire, who shall be vested with full powers to settle and adjust the several matters in controversy between this state and the commonwealth of Virginia, hereby confided to the aforesaid commissioners.

Resolved, That the compact or agreement entered into by the aforesaid commissioners, or in case of disagreement and appointment of an umpire, as hereinbefore provided, the award of the said umpire shall be final and conclusive on this state, and the faith of the state is hereby pledged to make such legislative enactments as may be necessary to secure all rights derived from the state of Virginia, to lands lying within any part of the territory now in dispute between the two states, which shall be adjudged to belong to this state; provided however, and it is hereby further,

2242 Resolved, That nothing herein contained shall have any effect, unless the legislature of Virginia shall first provide for the appointment of commissioners on the part of Virginia, to treat with the commissioners proposed to be appointed on the part of this state, and for the appointment of an umpire by the governor of the state of Delaware, in case of disagreement as aforesaid, and shall also pledge the faith of the said state, that the said compact or agreement, or umpirage, as the case may be, shall be conclusive on the said state, and also that all rights derived under this state, to lands lying within any of the disputed territory which shall be adjudged to belong to Virginia shall be respected.

Resolved, That the said commissioners and the said umpire shall from time to time, make reports of all proceedings had under and in virtue of these resolutions to the executive of this state.

Resolved, That the governor of this state be requested to transmit a copy of those resolutions to his excellency the governor of Virginia, to be laid before the legislature of the said commonwealth.

Endorsed: Supreme Court U. S. No. 1, Original, Oct. Term, 1907. Maryland *v.* West Virginia. Filed Oct. 15, 1907.

Office Supreme Court, U. S. Filed Oct. 15, 1907. James H. McKenney, Clerk.

2243 Acts of Assembly, Session 1832-3, Page 308.

No. 4. Resolution requesting the governor to obtain certain documents and testimony, relating to the boundary of the states of Maryland and Virginia.

(Agreed to by Both Houses, March 20th, 1832.)

Resolved by the general assembly of Virginia, That the governor of this commonwealth be, and he is hereby requested, to procure and file in the executive department, as soon as practicable, an authenticated copy of the record of a decision made some time anterior to the American revolution, before his majesty George II, late king of Great Britain, France and Ireland, in a case which was brought before his majesty in council, by the late proprietor of the Northern Neck of Virginia, and the late proprietor of the western domain of Maryland, in a dispute and controversy touching the limits and boundaries of the several letters patent granted by their late majesties king Charles II. and king James II., for land lying on both sides of the river Quiriough, or Potowmac; and also authenticated copies of such other papers as he shall think necessary and proper, to convene and take affidavits of such persons as may be able to testify to any facts or circumstances in relation to the settlement and adjustment of the western boundary of Maryland, which in his opinion ought to be perpetuated; and the affidavits when taken, shall be sealed up and transmitted to the governor and filed by him, and preserved in the executive department.

Endorsed: Supreme Court U. S. No. 1, Original, Oct. Term, 1907. Maryland *v.* West Virginia. Filed Oct. 15, 1907.
Office Supreme Court, U. S. Filed Oct. 15, 1907. James H. McKenney, Clerk.

2244 Acts of Assembly, 1832-33.

Chap. 32. An Act to settle the western limits of this state, and the dividing and boundary line between this state and commonwealth of Maryland.

1. Be it enacted by the general assembly of the commonwealth of Virginia, That the governor be and he is hereby authorized to appoint three commissioners on the part of this state, to meet such commissioners as may be appointed for the same purpose, by the commonwealth of Maryland, to settle and adjust by mutual compact between the two governments, the western limits of this state, and the dividing and boundary line between this state and the commonwealth of Maryland, to commence at the Fairfax stone, or at the first fountain of the Cohongoroota or North branch of the Potomac river, and to run a due north course to intersect the line between this state and the state of Pennsylvania. If, however, the commonwealth of Maryland shall fail to appoint commissioners, then, and

in that event, the commissioners appointed by the governor of this commonwealth, or any two of them, shall run and mark said line, according to the provisions of this bill: and the commissioners appointed as aforesaid, are required to report their proceedings in virtue of their appointment and authority, to the general assembly of this state, at the session next after the same shall have been concluded, for confirmation or rejection:

And whereas, sundry citizens of this state, may hold lands in virtue of patents granted by the commonwealth of Maryland, before the divisional line shall have been settled and adjusted between the two states, and as it is proper that all inhabitants on either side of the boundary line, so to be settled and adjusted, who shall have obtained patents for t*g*eir lands in Virginia or Maryland,
2245 should have their titles confirmed in whichever state they may happen to fall:

2. Be it therefore enacted, That any person or persons holding lands within the limits of this state, which shall have been granted and patented by Maryland, before the settlement and adjustment of the said divisional line aforesaid, shall have been considered as lying within the limits of Maryland and subject to the jurisdiction thereof, but which, by the settlement and adjustment of the said divisional line, shall be found to lie within this state, shall be at liberty to take out and receive patents from the land office of this state. And after the confirmation of the settlement and adjustment of the said divisional line, as aforesaid, the register of the land office is hereby empowered and directed, on application of any of the above described land holders upon their producing their Maryland patents, or authenticated copies thereof, which shall be lodged in the land office, to grant a patent or patents for the lands expressed in such original grant or grants; and the person or persons thus receiving patents in exchange, shall not be liable to pay any fee or charge, save only the common fees of office; Provided, nevertheless, and be it enacted, That in all cases, the prior title acquired by any person or persons, in and to any such lands, under any grant or patent, whether granted by Maryland or Virginia, or by or under either of them, shall prevail and have the preference.

3. And be it enacted, That no grant, as aforesaid, shall extend, or be deemed, construed, or taken to extend to the right of any grantee or grantees, and those claiming under them, to any lands, tenements or hereditaments, which are situated, lying or being within this state, which have been at any time, or in any manner, heretofore granted by or under the authority of this common-
2246 wealth; any thing herein before contained to the contrary thereof notwithstanding.

4. And be it enacted, That the commissioners appointed as aforesaid, shall receive four dollars per day, while employed in settling and adjusting the aforesaid divisional line; and they are hereby authorized to employ a surveyor, two chain carriers, and one or more persons to mark the said line. And it shall be the duty of the said commissioners, to ascertain the number of days the surveyor shall be so employed, and certify the same to the auditor of public ac-

counts, who shall thereupon issue a warrant in favor of such surveyor, for four dollars per day, for his services: the said commissioners shall also certify to the auditor of public accounts, the names of the chain carriers and markers employed, the number of days each has been so employed, and such daily allowance as to them may seem just: whereupon, the auditor of public accounts, upon application, shall issue warrants in favor of such chain carriers and markers.

5. Be it further enacted, That all expenses to be incurred in running and settling the aforesaid divisional line, shall be paid out of any money in the treasury of this commonwealth, not otherwise appropriated.

6. This act shall be in force from and after the passage thereof.

Endorsed: Supreme Court U. S. No. 1 Original, Oct. Term, 1907. Maryland *v.* West Virginia. Filed Oct. 15, 1907.

Office Supreme Court, U. S. Filed Oct. 15, 1907. James H. McKenney, Clerk.

2247 Maryland Laws, Acts of 1833, 1834, Resolution No. 80, Passed Mar. 14, 1834.

Resolutions Relative to the Controversy Between this State, and the State of Virginia, in Regard to the Southern and Western Boundaries.

Resolved by the General Assembly of Maryland, That it is necessary for the peace and security of our people, and the dignity of the state, that our southern and western Boundaries should be finally settled and defined.

Resolved, That this state has seen with deep regret, the refusal on the part of Virginia, to leave the settlement of these boundaries, to friendly arbitration as proposed by this state.

Resolved, That the Attorney General of this state, be and he is hereby requested to cause suit to be instituted in the name of the State of Maryland, against the Commonwealth of Virginia, in such manner and form, as may be technically required, in the Supreme Court of the United States, for the purpose of procuring a final legal adjustment and settlement of the Southern and Western Boundaries of this state.

Resolved, That the Governor and Council of this state, be, and they are hereby authorized and requested to select and employ two additional counsel, to assist the Attorney General, one of whom shall be requested to collect and prepare the evidence written or oral, to illustrate and establish the claims and pretensions of this state, in regard to our southern and western boundaries.

Resolved, That all adversary proceedings on the part of this state, against the state of Virginia, shall cease at any time before suit brought or final judgment, when that state shall accept the overtures of Maryland, made by her resolutions, at December session eighteen hundred and thirty one.

Resolved, That the Governor of this state, be authorized and requested to transmit to the Governor of Virginia, a copy of the foregoing report and resolutions as soon as practicable.

Endorsed: Supreme Court U. S. No. 1, Original. Oct. Term, 1907. Maryland *v.* West Virginia. Filed Oct. 15, 1907. Office Supreme Court U. S. Filed Oct. 15, 1907. James H. McKenney, Clerk.

2248 Maryland Laws, Acts of 1834, Resolution No. 99, Passed Mar. 21, 1835.

Report and Resolution in Relation to the Southern and Western Boundary of this State.

The special committee to whom was referred so much of the late Executive Message, as relates to the southern and western boundaries of this State, have given to the subject that careful examination and attentive consideration, its great importance, and the delicate nature of the pending controversy in relation thereto, with a sister State, seemed to require, and respectfully beg leave to

Report.

That although they have been unable to discern any thing in the Executive Communication immediately referred to them, or the previous actions of the State of Maryland, in relation to this interesting subject, which does not command their entire approbation, or which would indicate the propriety of reviewing, in any manner at this time, the merits of the controversy, or recommending any relaxation or change in the course deliberately determined upon by the State, at the last session of the Legislature, yet anxious to preserve, if possibly within the reach of any means compatible with the honor and just rights of Maryland, that harmony and good understanding heretofore so long and so happily existing between the two States, your committee have thought it might be conducive to that desirable end, and not inconsistent with the duties assigned them, to notice some of the views expressed in the late Message of his excellency Governor Tazewell, to the Legislature of Virginia, in reference to this subject; this document is not officially before us,
2249 but it has been given to the world through the press, and emanating from so high a source, and treating of the very subject your committee are charged to enquire into, with apparent and indeed express regret that circumstances exist, which, in the judgment of his Excellency, preclude Virginia from a direct communication of her views to Maryland. Your committee think they might be deemed wanting in their duty, if not in that respect, of which Virginia and her functionaries are ever worthy, were they to pass it over in silence. In that document it is declared that the law of Virginia "to settle the western limits of that State, and the dividing boundary line between that State and the commonwealth of

Maryland," passed 5th March, 1833, was intended as an acceptance of our "own proposition in the amicable settlement" of the questions existing between us. That the determination of Maryland to seek a decision of her rights by the judicial authority of the Union, was probably occasioned by "a misapprehension of the terms" of that enactment of Virginia, which was susceptible of satisfactory explanation, now only withheld, and with regret, because the attitude of Maryland is regarded as hostile or menacing.

Your committee have been unable to discover any thing in the proceedings of Maryland, which could suggest the idea of menace, nor does it seem to be at all applicable to the intimate relations between the members of this confederacy; certainly nothing could be more foreign to the intentions of Maryland, than to assume such an attitude in relation to Virginia, one of her earliest and most glorious allies, not nearer geographically than in consanguinity and affection. Her great strength we know with joy, not envy; and in her glory we have always felt the keen interest of participation.

2250 Maryland had never a hostile feeling towards Virginia; cannot wish to do her violence or wrong, but on the contrary, desires the removal of the only source of disagreement, in order, that if possible their union may be more intimate, and established forever on the best and surest foundations.

The southern and western boundaries of Maryland have never been adjusted and defined, by compact with Virginia. We hold a Charter, a charter which has been fully and solemnly recognized by the State of Virginia, but in the interpretation of that instrument, the two States have not been agreed. It is right—even indispensable, that the interpretation should be settled, and the limits of the States ascertained, and our sister State cannot but some time perceive that in that settlement her voice (admitted to be equal) is not entitled to preponderating influence.

The State of Maryland seeks or desires nothing which is not hers of right, and it is necessary for her honor, that in her controversy, though amicable, and with her sister, the terms of adjustment shall not be dictated to her.

A brief review of the proceedings of Maryland, would demonstrate that she has from time to time mildly reminded her sister State of her claims, and sought to refer them to the examination of commissioners, to be appointed by the parties, from among their own citizens respectively, desiring only to provide for the appointment of an umpire by one of our disinterested sister States, in the event of disagreement among the commissioners. In such propositions Maryland has evinced her confidence in the justice of her cause, but has suggested nothing incompatible with the dignity of Virginia. She has desired, and still desires the peaceful ascertainment of her rights, never doubting but Virginia would deem

2251 it necessary to her true glory to do right at whatever sacrifice, just that the relative rights of herself and neighbors should be equitably ascertained, and govern herself accordingly, without reckoning her means of resistance.

The law of Virginia, before referred to, of March 5th, 1833, has been understood by us not only not in accordance with, but directly repulsive of, the equitable and moderate wishes of Maryland, as an undertaking in truth, by one of the parties, absolutely to settle and pronounce against the claim of the other.

So regarding it, the State of Maryland determined to lay her controversy before that high and independent tribunal, empowered by all the States to hear and decide "all controversies between two or more States;" and she has unshaken confidence that when the founders of the union agreed that all controversies between these States, should be settled by appeals to justice, and not to arms, they did not fail to achieve that peculiar and brightest glory of our country.

It is, however, gratifying to learn from a source entitled to so much respect, that we may have misconceived the proceedings and intentions of Virginia, and to be allowed to hope that she may yet do what may not be less advantageous and becoming to her than to Maryland. It would be lamentable that false honor or strained punctilio should be permitted to estrange these States, or prevent the free course of explanation and liberal and just actions among them.

That State will probably be regarded by posterity, as well as our cotemporaries, as most loyal to the common welfare, and to its own honor, which shall be most distinguished by forbearance and moderation: under the influence of these sentiments, your com-
2252 mittee recommend that the "door of explanation" which Virginia seems to consider closed upon her, by the resolutions of the last session of the Legislature, be opened wide, by their unconditional repeal, and the discontinuance of all proceedings under them; and that the Governor of this State be requested to communicate to the government of Virginia, this intelligence, and to propose to reopen with that government, a negotiation for the final adjustment of this long pending controversy, upon the basis of the resolutions of the General Assembly of Maryland, passed at December session, 1831, and for these purposes your committee have proposed, and herewith report to the House, sundry resolutions.

Resolved by the General Assembly of Maryland, That resolution No. eighty, passed at December session, eighteen hundred and thirty-three in relation to the southern and western boundaries of this State, and the controversy on that subject with the State of Virginia, be and the same are hereby repealed, and the Attorney General of this State is hereby directed to discontinue all proceedings under the same.

Resolved, That the Governor be, and he is hereby authorized and requested to transmit a copy of the above resolution, without unnecessary delay, to His Excellency, the Governor of Virginia, and also to communicate to the Government of Virginia, the earnest desire of the State of Maryland, to close and finally adjust this long pending question, by amicable negotiation.

Endorsed: Supreme Court U. S. No. 1 Original, Oct. Term 1907. Maryland *v.* West Virginia. Filed Oct. 15, 1907. Office Supreme Court, U. S. Filed Oct. 15, 1907. James H. McKenney, Clerk.

2253 THE STATE OF MARYLAND
vs.
THE COMMONWEALTH OF VIRGINIA.

To the Honorable the Justices of the Supreme Court of the United States:

The State of Maryland one of the United States of America, by Josiah Bayly Attorney General of the same State, comes here into court and exhibits her bill of complaint against the Common Wealth of Virginia one other State of the said United States; and sheweth that, after the Crown of England had acquired a title to, and dominion over large tracts of Country on the continent of North America, to wit, on the twentieth day of June in the year sixteen hundred & thirty two, Charles the then reigning King of England in right of the Crown granted and erected the Province of Maryland being a part thereof by his charter or Letters Patent described and contained in the said Charter or Letters Patent and which Charter or Letters Patent with the translation are as follows, that is to say,

The Charter of the Province of Maryland.

Carolus Dei Gratia Angliae, Scotiae, Franciae et Hiberniae Rex fidei defensor, &c., omnibus ad quos praesentes litterae nostrae pervenerint, Salutem.

II. Cum perdilectus et perquam fidelis subditus noster Caecilius Calvert Baro de Baltimore in regno nostro Hiberniae filius et haeres Georgii Calvert militis unper barnis de Baltimore in eodem regno Hiberniae patris inhaerens vestigiis laudabili quodam et pio christianam religionem pariter et imperii nostri territoria dilatandi studio flagrans licentiam nobis ut copiosam Anglicanae gentis coloniam industria ac impensa sua ad certam quandam regionem infe-
2254 rius describendam in terra quadam in partibus Americae hactenus inculta et barbaris nullam Divini Numinis Notitiam habentibus in partibus occupata deducere possit totamq; illam regionem cum certis quibus dam priviligis et jurisdictionibus ad coloniae suae et regionis praedictae salubre regimen et statum pertinentibus a regia nostra celsitudine sibi et haeredibus suis dari con cedi et confirmari humiliter supplicaverit.

III. Sciatis igitur quod nos pium et nobile praefatorum baronum de Baltimore propositum et studium regio favore prosequentes ex gratia speciali certa Scientia et mero motu nostris dedimus concessimus et confirmavimus et per hanc praesentem chartam nostram pro nobis haeredibus et successoribus nostris praefato Caecilio modo baroni de Baltimore haeredibus et assignatis suis damus concedimus et confirmamus totam illam partam peninsulae sive Chersonesi jacentis in partibus Americae inter Oceanum ex oriente et sinum de Chesopeake ab occidente a residno ejusdem per rectam lineam à promontorio sive capite terrae vocato Watkins Point juxta sinum praedictum prope fluvium de Wighco scituato ab occidente usque ad

magnum oceanum in plaga Orientali ductum divisam et inter metam illam à meridie usque ad partem illam estuarii de Delaware ab aquilone quae subjacet quadrageseino gradui latitudinis Septentrionalis ab aequinoctiali ubi terminatur Nova Anglia totumque illius terrae tractum infra metas subscriptas (videlicet) transeundo a dicto aestuario vocato Delaware Bay recta linea per gradum praedictum usque ad verum meridianum primi fontis fluminis de Pottowmack de inde vergendo versus meridium ad ulteriorem dicti fluminis ripam et eam sequendo qua plaga occidentalis ad meridionalem spectat usque ad locum quendam appellatum Cinquack prope ejusdem fluminis ostium scituatum ubi in praefatum sinum de
2255 Chesopeake evolvitur ac inde per lineam brevissimam usque ad praedictum promontorium sive locum vocatum Watkins Point ita quod totus terrae tractus per lineam predictam inter magnum Oceanum et Watkins Point divisus usque ad promontorium vocatum Cape Charles et singula sua appenditia nobis haeredibus et successoribus nostris integre remaneant exceptam perpetuum.

IV. Nec non omnes insulas et insululas infra limites praedictos comedimus etiam et confirmamus eidem baroni de Baltimore haeredibus et assignatis suis omnes et singulas insulas et insululas ab orientali praedictae regionis littore orientem versus in mari natas vel nascendas infra decem lencas marinas ab eodem littore scituatas cum omnibus et singuli portubus navium stationibus aestuariis fluminibus et fretis ad regionem vel insulas praedictas pertinentibus omnesque fundes terriae compestua sylvas montana paludes lacus flumina aestuaria et freta infra metas terminos et limites praedictos scituata sen existentia cum cujuscunque genesis piscium tam balaenarum, sturgeonum et a liorum rega lium quam a livrum in mari senubus fretis vel fluminibus infra praemissa piscationibus et piscibus ibidem captis omnesque insuper ami argenti gemmarum et lapidum pretiosorum et alias quas cumque sive lapidum sive metallorum sive atterius cujuscunque rei ant materiae venas mineras et fodinas tam apertas quam occultas infra regionem insulas sen limites praedictor repertas et reperiendas et hoc ompleus omnium ecclesiarum quas (crescente Christi cultu et religione) infra dictam regionem insulas insululas et limites praedictos futuris temporibus aedificari contigent patronatus et advocationes una cum licentia et facultate ecclesias capellas et oratoria in locis infra praemissa congruis et idone is exteriendi et
fundaendi eaque dedicari et sacrari juxta ecclesiasticas regin
2256 nostri Angliae facrendi cum omnibus et singulis hujus modi ac adeo amplis juribus jurisdictionibus privilegiis praerogativis regalitatibus libertatibus immunitatibus imibusque regalibus et *et* franchese is quibus cumque temporalibus tam per mare quam per terram infra regionem insulas insululas et limites praedictos habendis, exercendis intendis et gandendis prout aliquis episcopus Dunelmensis infra episcopatum sive comitatum palatinum Dunelmensum in regno nostro Angliae unquam ante hac habuit tenuit usas vel gavisus fuit sen de jure habere tenere uti vel gandere de buit aut potuit.

V. Ipsumque modo baronem de Baltimore et haeredes suos regionis praedictae caeterorumque omnium praemissorum veros et

absolutus dominos et proprietarios (exceptis prae exceptis) salva semper fide et ligrancia ac dominio directo nobis haeredibus et successoribus nostris debites pro nobis haeredibus et successoribus nostris facimus creamus et constituemus per presentes haberdum tenendum possidendum et gaudendum, praedictam regionem insulas insulas et cactera praemissa praefato modo baroni de Baltimore et haerdibus et assignatis suis ad solum et proprium opus et usum ipsius modo baronis de Baltimore haeredum et assignatorum suorum in perpetuum Tenendum de nobis haeridibus et successoribus nostris regibus Angliae ut de castro nostro de Windsor in comitatu nostro Berkeiae in libero et communi soccagio per fidelitatem tantum pro omnibus servitiis et non in capite nec per servitium militare Reddendo in de nobis haeredibus et successoribus nostris duas sagittas indicas partium illarum aepud dictum castrum de Windsor singulis annis tradendas in die Martis in Septimona Parchae Ac etiam quintam partem omnis metalli amei et argentii Anglice of gold and silver ore, quod infra praedictos limites de tempore in tempos contigerit in veniri.

2257 VI. Ut vero praedicta regio sic a nobis concessa et descripta caeteris omnibus illius terrae regionibus praefulgrat et amphoribus titulis de coretur, Sciatis quod nos de ampliori gratia nostra certa scientia et mero motu nostris dictam regionem ac insulas in provinciam erigendas esse duscimus prout eas ex plenitudine potestatis et praerogativae nostra regiae pro nobis haeredibus et successoribus nostris in provinciam erigimus et incorporamus eamque Terram Mariae Anglice Maryland nominamus et sic in futino nomenari volumus.

VI. Et quoniam praefatum modo baronem de Baltimore totius provinciae antedictae verum dominium et proprietarium superius fecimus et ordinavimus ulterius igitus, Sciatis quod nos pro nobis haeredibus et successoribus nostris eidem modo baroni (de cujus fide prudentia justitia et provida animi circumspectione plurimum confidimus) et haeredibus suis pro bono et felici dictae provinciae regimine leger quas cunque sive ad publicum ejusdem provinciae statum sive ad privatam singulorum utilitatem pertinentes juxta janas discretiones suas de et cum consilio assensua et approbatione liberorum hominum ejusdem provinciae vel majoris partis eorundem vel eorum legatorum vel desputatorum quos ad lejes condendas quum et quoties opus fuerit a praefacto modo barone de Baltimore ac haeredibus suis ac in forma quae illi vel illis melior esse videbitur convocari volumus condendi faciendi eudendi et sub sigillo praedicti modo baronis de Baltimore ac haeredum suorum promulgandi easque in omnes homines infra dictam provinciam et limites ejusdem pro tempore existentes vel sub illius vel illorum regimine et potes tate Terram Mariae vesus navigantes aut inde redenutes extra vel ad terram Angliae vel extra vel ad aliqua alia domina nostra vel aliena ubilibet constituta per muletarum impositionem incarcera-

2258 tionem et aliam quomlibet coercionem etiam si oporteat et delicti qualitas id exigent per membri vel vitae privationem per se praefatum modo baronem de Baltimore et haeredes sues sen per deputatum locum-tenentum judices justicarios magistrates of-

ficiaries et ministros suos secundum tenoreum ac veram intentionem prosentium constituendos et conficiendos debite exequendi judicesque et justici arios magistratos et officiarios quos-cunque ad quascunque causus et cum quacunque potestate et in forma quae praefato modo baroni de Baltimore vel haeredibus suis melior esse videbitur terra illa ac partium illarum mari constituendi et ordinandi crimina item et excessus quoscunque contra hujusmodilljes sive ante judicium acceptum sive postredittendi relaxandi et pardonandi et abolendi caeteraque omnia alia et singula ad justitiae complementum curiasque praetoria et tribunalia judicio-um formas et procedendi modos pertinentia etiam side illis expressa in presentibus non fiat mentia ac in curiis praetoriis et tribunalibus illis in actionibus sectis causis et negotiis quibus cunque tam criminalibus quam personalibus realibus et mixtis ac praetoris procedendi placita tenendi et terminandi per judices per ipsos delegatos liberam plenam et omninodam tenore praesentium concedimus potestatem Quos quidem leges sic ut praemittitur promulgandas absolutissima juris firma tate niti et ab omnibus hominibus subditis et ligeis nostris haeredum et successorum nostrorum quatenus eos concernant in partibus illis custodin et sub paenis in eisden expressis et exprimendis inviolabiliter observari volumus injungimus praecipimus et mandamus. Ita tamen quod leges praedictae suit rationi consonae et non suit repugnantes sec contrarriae sed (quoad convenentes fieri poterit) consentaneae legibus Statutis consuetudimbus ac juribus hujus regni nostri Angliae.

VII. Et quoniam in tantae provinciae regimine repentini
2259 casus saepenumero contingent quibus necesse erit remedium adhiberi antequam liberi tenentes dictae provinciae legati vel deputati sui ad leges condendas convocari possuit nec idoneum erit continuo tali casu emergente tantum populum concocari. Idcerco pro meliori gubernatione tantal provinciae volumus et ordinamus ac per praesentes pro nobis haeredibus et successoribus nostris praefato modo baroni de Baltimore et haeredibus suis concedimus quod praefatus modo baro de Baltimore et haeredes sui per se vel per magistratus et officiarios in ex parte debite ut praefectur constituendos ordinationes idoneas et salubres de tempore in tempus facere et constituere possint et valeart infra provinciam praedictum custodiendas et observandas tam pro custodia paces quam pro meliori re geniine populi ibidem degentis easque omnibus quos eaedem abiqualiter tangant sen tangere possint publice innotescere Quas quidem ordinationes infra dictam provinciam inviolabiliter observari Volumus sub paenis in eisdem exprimendis Ita quod eaedem ordinationes suit rationi consonae et non suit repugnantes nec contrariae sed (quoad convenenter fieri potest) consentaneae legibus Statutis aut juribus regni nostri Angliae Et ita quod eaedem ordinationes se non extendent ad jus vel interesse alicujus personae sive aliquarum personarum de aut in membro irta libero tenemento bonis sen cattalis aliqualiter astringendum ligandum overandum sen tollendum.

IX. Porro ut nova colonial populi eadem confluentis multitudine faelicius crescat parriter et a barbarorum alearumve hostium pis-

catorum et praedonum incursibus firmius muniatur Ideireo Nos pro nobis haeredibus et successoribus nostris omnibus hominibus et subditis nostris haeredum et successorum nostrorum ligeis praesentibus et futuris nisi quibus id specialiter fuerit intendictum
se familias que suas ad dictam provinciam cum idone is
2260 navigiis et commeatu congruo transferendi sedesque suas ibidem collocardi incolendi et inhabitandi castra que et casteella seu alia fortilitia ad praefati modo baronis de Baltimore et haeredum suorum arbiturium pro defensione publica et sua exstruendi et munmendi facultatem licentiam et libertatem damus et concedimus per praesentes statuto de fugitivis vel aliis quibus cunque in contrarium praemissorum in aliquo non obstantibus.

X. Volumus etiam et ex uberiori gratia nostra pro Nobis haeredibus et successoribus nostris firmiter praecipimus constitumines ordinamus et mandamus quod dicta provincia de nostra ligeancia sit quod que omnes et singuli subditi ac ligei nostri haeredum et successorum nostrorum in praefatam provincian deducti vel deducendi ipsorum et aliorum de ipsis deducentium liberi ibidem seu jam nati seu imposterum nascendi suit et erunt indigenae et ligei nostri haeredum et successorum nostrorum reni nostri Angliae et Hiberniae Ac in omnibus teneantur tractentur reputentur et habientur tanquam fidelis ligei nostri ac haeredum et successorum nostrorum infra regnum nostrum Angliae oriendi nec non terras tenementa reventiones servitia et alia haereditamenta quae cunque infra regnum nostrum Angliae ac alia dominia nostra haereditare seu aliter perquirere recipere capere habere tenere emere at possidere ac eis uti et gandere eaque dare vendere alienare et tegare Ac etiam omnia privilegia franchesias et libertates hujus regni nostri Angliae libere quiete et pacifice habere et possidere eisque uti et gandere passint tanquam ligei nostri infra dictum regnum nostrum Angliae nati seu oriendi absque impedimento molestatione vexatione impetitione sive gravamine nostri haeredum vel successorum nostrorum quocumcunque aligno statuto actu ordinatione seu provisione in centrarium in de non obstante.

2261 XI. Praeterea ut subditi nostri ad expeditionem hanc prompto et alacri animo suscipiendam in citentur sciatis quod nos degratia nostra speciali ex verta scientia et mero moto nostris tam praefato modo baroni de Baltimore et haeredibus suis quam aliis omnibus de tempore in tempus habitandi vel cum incolis provinciae praedictae commercium habendi causa in provinciam illam profecturis omnia et singula sua bona tam mobilia quam immobilia merces et mercimonia annonam etiam genesis cujus cunque aliaque ad victum et vestitum necessaria quae cunque per leges et statuta regnorum et dominorum nostrorum extra eadem regna deportari non prohibita in quibus cunque portubus nostris haeredum et successorum nostrorum in naves imponendi et overandi et in dictam provinciam per se vel servos aut assignatos suos traducendi absque impedimento vel molestatione Nostri haeredum vel successorum nostrorum vel abiquorum officiariorum nostrorum haeredum vel successorum nostrorum (salvis Nobis haeredibus et successoribus nostris impositionibus subsidiis custumis et allis pro eisdem rebus

et merchandizes debites et solu bilibus) plenam tenore praesentium licientiam damus et concedimus aliquo statuto actu ordinatione aut alia re qua cunque in contarium non obstante.

XII. Quia vero in tam longinqua regione inter tot barbaras nationes posita tam ipsorum barbarorum quam aliorum hostium piratarum et praedonum incursus verisimiliter timeri poterint Ideirco prae fato modo baroni de Baltimore ac haeredibus et assignatis suis per se vel per capitaneos aut alios officiarios suos omnes homines cujuscunque conditionis aut unde cunque oriendos in dicta provincia de Terra Mariae pro tempore existentes ad vexilla vocandi delectus habendi bella gerendi hostes que et praedones praedictos partes illas infestantes terra marique etiam ultra provinciae
2262 suas limites prosequendi cosque (si Deus dederit) profligandi et ca prindi et captos jure belli occidendi vel pro arbitrio suo servandi casteraque omnia et singula quae ad capitanei generalis exercitus jus et officium spectant sen spectare consueverint faciendi adeo plenam et liberam ac quivis capitanens generalis exercitus unquam habuit dedimus ac pro Nobis haeredibus et successoribus nostris damus potestatem per praesentes.

XIII. Volumus etiam et per hanc chartam nostram praefato modo baroni de Baltimore et haeredibus et assignatis suis potestatem libertatem et authoritatum damus ut in casu rebellionis repentini tumultus aut seditionis si quae (quod abrit) sive super terra infra provinciam praedictam sive super alto mari itinere ad dictam provincium de Terra Mariae faciendo vel inde redenudo oriri continge ret per se vel capitaneos deputatos aut alios officiarios suos sub sigillis suis ad hoc deputandos quibus etiam Nos pro Nobis haeredibus et successoribus nostris plenisamam per praesentes potestatem et authoritatem damus et concedimus adversus rerum novarum partium illarum authores seditinos regimini illius vel illorum se subtrahentes militiam detrectantes transfugas emansores desertores vel aliter utcunque contra rem morem et disciplinam militarem delinquentes jure utantur militari adeo libere et in tam amplis modo et forma prout aliquis capitaneus generalis exercitus virtute officii sui eo uti possit aut consuevit.

XIV. Porro ne viris honestè natis et se ad praesentem expeditionem accencturis ac bene de Nobis et regnis nostris pace et bello mereri cupien tibus in tam remota longeque dissita regione omnis ad honores et dignitates via praeclusa et penitus obsepta esse videatur Propterea Nos pro Nobis haeredibus et successoribus nostris praefato modo baroni de Baltimore et haeredibus et assignatis suis
2263 liberam et plevariam potestatem damus favores gratias et honores in bene meritos cives infra provinciam praedictam inhabitantes conferendi cosque quibus cunque titulis et dignitatibus (modo tales non fuerint quae in Anglia nunc sunt in usa) pro arbitio suo decorandi villas item in burgos et burgos in invitates ad inhabitantium merita et locorum opportunitates cum privilegiis et immunitatibus congruis erigendi et incorporandi caeteraque omnia et singula in praemissis faciendi quae illi vel illis congrua et opportuna esse vide buntur etiam si talia fuerint quae de sua natura

mandatum et warrantum exigant magis speciale quam in praesentibus sit expressum.

XV. Volumus etiam ac per praesentes pro Nobis haeredibus et successoribus nostris praefato modo baroni de Baltimore haeredibus et assignatis suis omnibus que praedictae provinciae incolis et inhabitantibus quibus cunque praesentibus et futuris per hanc chartam nostram licentiam damus et concedimus ut mercesquascunque et mercimonia exdictae provinciae fructibus et commoditibus terrestribus vel maritimis rediginda per se vel per servos factores aut assignatos suos in quasconque portus nostros haeredum et successorum nostrorum Angliae aut Hiberniae libere inferre et exonerare aut aliter de eisdem ibidem disposere et si opus fuerit easdem merces infra unum annum ab exoneratione earum continuo numerandum rursus in naves easdem vel alias onerare et in quascunque voluerint regiones sive nostras sive extraneas de amicitia nostra haeredum et successorum nostrorum deportore valeant Proviso semper quod tales et talia custumas et impositiones subsidia et teloma Nobis haeredibus et successoribus nostris inde solvere teneantur quales et qualia reliqui subditinostri regni nostri Angliae pro tempore existentes solvere tenebuntur ultra quas et quae praefatae provinciae dictae Terrae Terra Mariae nuncupatea nicolas gravari nolumus.

2264 XVI. Et ulterius de ampliori gratia nostra speciali ac ex certa scientia et mero motu nostris pro Nobis haeredibus et successoribus nostris concedimus praefato modi baroni de Baltimore haeredibus et assignatis suis plenam et absolutam potestatem et authoritatem faciendi et erigendi et constituendi infra provincian de Terra Mariae ac insulas et insululas praedictas tot et tales portus maritimos navium stationes crecas et et alia loca exonerationis et depositionis bonorum et mercimoniorum è navibus cymbis ac aliis vasibus ac onerationis in eadem et in tot et talibus locis et cum talibus juribus juris dictionibus libertatibus et privilegiris ad hujusmodi portus spectantibus prout ei vel eis melius videbitur expedire quodque omnes et singulae naves cymbal et alia vasa quae cunque causa merchandizandi ad provinciam et ex provincia praedicta venientia et exeuntia ad hujusmode portus per dictum modo baronem de Baltimore haeredes et assignatos suos sic erigendos et constituendos solum modo onerentur et exonerentur alique usu consuetudine aut obliqua alia re in contrarium non obstante salva semper nobis haeredibus et successoribus nostris et omnibus subditis regni nostri Angliae et Hiberniae haeredum et successorum nostrorum libertate piscandi piscem marinum tam in mari aestuariis et fretis et fluminibus navigio idoneis quam in portubus aestuariis et crecis provinciae antedictae ac privilegie saliendi et exsiccardi vel au faciendi pisces in littoribus ejusdem provinciae Et ea de causa buscam et vinima ibidem cresentia succidere et capere; et casas et tuguriola in hac parte necessaria extruere prout rationabiliter hactenus usi fuerunt aut potuerunt quibus quidem libertatibus et privilegiis dicti subditi nostri haeredum et successorum nostroum gandebunt absque notabili damno vel injuria praefato modo baroni de Baltimore haeredibus vel assignatis suis aut ejusdem provinciae incolis
2265 et inhabitantibus in portubus crecis aut littoribus praedictis et praesertim in boscis et sylvis ibidem crescentibus aliqualiter

fienda Et si quis hujusmodi dammum fecerit aut injuriam gravis indignationis nostrae haeredum et successorum nostrorum debitaeque legum castigationis periculum paenamque praeter emendationem subeat.

XVII. Volumus insuper statuimus et ordinamus ac per praesentes pro Nobis haeredibus et successoribus nostris concedimus praefato modo baroni de Baltimore haeredibus et assignatis suis quod idem baro de Baltimore haeredes et assignati sin de tempore in tempus imperpetuam habeant et gaudeant telonia et subsidia in portubus navium stationibus et aliis crecis et locis praedictis infra provinciam praedictam solu belia sive emergentia pro mercimoniis et rebus ibidem onerandis et exonerandis per ipsos et populas ibidem ut praedictum est occasione emergente rationabiliter assidenda quibus eadem justa de causa debita proportione assidere et inducere telonia et subsidia ibidem potestatem pro Nobis haeredibus et successoribus nostris damus per praesentes.

XVIII. Et ulterius de gratia nostra speciali ac ex certa scientia et mero motu nostris dedimus concessimus et confirmavimus ac per praesentes pro nobis haeredibus et successoribus nostris damus concedimus et confirmamus praefato modo baroni de Baltimore haeredibus et assignatis suis plenam et absolutam licentiam potestatem et authoritatem quod ipse praefutus modo baro haeredes et assignati sui de tempore in tempus imposterum imperpetuam adejus vel eorum libitum et volemtatem possuit et valeant assignare alienare concedere demittere vel feoffare praemissorum tot tales et tantas partes et parcellas eas per quirere volenti vel volentibus quot quales et quantas dunerint opportunas habendum et tenedum eisdem personae et personis eas capere vel perquirere volenti et volentibus
2265 haeredibus et assignatis suis in feodo simplici vel feudo talliato vel pro termino vitae vitarum vel annorum tenendum de praefato modo baroni de Baltimore haeredibus et assignatis suis per tot talia et tanta hujusmodi servitia consuetudines et redditus quot quanta et qualia eidem modi baroni de Baltimore haeredibus et assignatis suis virum fuerit vel placuerit et non de Nobis haeredibus vel successoribus nostris immediati et eisdem personae et personis et earum cuilibet et quibustibet damus et per praesentes pro Nobis haeredibus et successoribus nostris concedimus licentiam authoritatem et potestatem quod tales persona et personae praemissa sive aliquam inde percellam de praefato modi baron de Baltimore haeredibus et assignatis suis recipere possit et possint ac tenere si bi it assignatis suis vel haeredibus suis de quocunque statu haereditario in feodo simplici vel feodo talliato vel aliter prout eis et modi baroni de Baltimore haeredibus et assignatis suis vide bitur expedire de eodem barone de Baltimore haeredibus et assignatis suis statuto in parliamento domini Edward filii regis Henrice unper regis Angliae progenitoris nostri edito communiter vocato "Statutum Quia Emptores Terrarum" in regno nostro Angliae dudum edito aut aliquo alio statuto actu ordinatione usu lege vel consuetudine aut aliqua alia recausa vel materia in contrarium inde antehac habita facta edita ordinata sen provisa in contrarium inde non obstante.

XIX. Ac eidem baroni de Baltimore et haeredibus suis particulas aliquas errae infra provinciam praedictam in maneria erigere et in maneriorum eorum singulis habere et tenere curiam baronis et omnia quae adcuriam baronis pertinent et virum franci plegii ad conservationem pacis et melius partium illarum regimen per se et seneschellos suos vel aliorum maneriorum illorum cum constituta fuerint dominos pro tempore existentes deputandos habere et
2267 custodire et in eisdem omnibus uti ad visum franci plegii pertinentibus licentiam damus et concedemus per praesentes.

XX. Ac ulterius volumus ac per praesentes pro Nobis haeredibus et successoribus nostris convenimus et concedimus ad et cum praefato modo barone de Baltimore haeredibus et assignatis suis quod Nos haeredes et successores nostri nullo tempore imposterum aliquas impositiones custumas aut alias taxationes quotas seu contributiones quascunque imponemus aut imponi faciemus aut causabimus in aut super incolas aut inhabitantes provinciae praedictae pro bonis terris vel tenementis suis infra eandem provinciam aut super aliqua tenementa terras bona seu catallu infra provinciam praedictam aut in aut super aliqua bona vel merchandiza infra provinciam praedictam aut infra portus aut navium stationes dictae provinciae onerandas seu exonerandas et hanc declarationem nostram in omnibus curiis et praetoriis et coram quibuscunque judicibus nostris haeredum et successorum nostrorum pro sufficienti et legitima liberatione solutione et acquistantia inde de tempore in tempus recipi et allocari volumus ac pro Nobis haeredibus et successoribus nostris jubemus et mandamus praecipientes omnibus et singulis officiariis et ministrisnostris haeredum et successorum nostrorum et sub gravi indignatione injungentes requid in contrarium praemissoriene allo unquam tempore attemptare audeant aut eisdem allo modo contraveni aut sed praefato modo baroni de Baltimore et haeredibus ic praefatae provinciae de Terra Mariae incolis et mercatoribus praedictis corumque servis et ministris factoribus et assignatis in plenissimo hujus chartae nostrae usu et fruitione omni tempore prout decet auxilientur et assistant.

XXI. Et ulterius volumus ac praesentes pro Nobis haeredibus et successoribus nostris concedimus praefato modo baroni de
2268 Baltimore haeredibus et assignatis suis et dictae provinciae terrae tenentibus habitationibus praesentibus et futuris et singuli eorum quod provinciae praedicta terra tenentes vel incalae ejusdam coloniae aut patriae vel terrae Virginiae aut alicinjus atterius coloniae deductae vel deducendae membrum vel pars de castero non habeantur vel reputentur aut de eisdem dependentes sint aut regimini subsuit in aliquo ipsamque et ipsos ab eisdem seperamus et seperatos esse volumus per praesentes ac quod coronae nostrae Angliae immediati suit subjecti et de eadem dependentes imperpetuum.

XXII. Et si forte imposterum contingat dubitationes aliquas questiones circa verum sensum et intellutum alicujus verdi clansulae vel sententiae in hac praesenti charta nostra contentae generari eam semper et in omnibus interpretationem adhibere et in qui buscunque curiis et practoriis nostris obtinere volumus praecipimus et

mandamus quae praefato undi baroni de Baltimore haeredibus et assignatis suis benignior utilior et favorabilior esse judicabitur proviso semper quod nulla fiat interpretatio per quam sacro sancta Dei et vera christiana religio aut ligeantia Nobis haeredibus et successoribus) nostris debita immutatione prejudicio vel dispendio in aliquo patiantur eo quod expressa mentio &c.

XXIII. In cujus rei &c T. R. a pud West monasterium XX. die Junii per breve de private sigillo.

The Charter of Maryland.

Charles by the Grace of God, of England, Scotland, France and Ireland, King, defender of the Faith, &c., to all to whom these presents shall come, Greeting:

2269 II. Whereas our well beloved and right trusty subject Caecilius Calvert baron of Baltimore, in our kingdom of Ireland, son and heir of George Calvert, knight, late baron of Baltimore, in our said kingdom of Ireland, treading in the steps of his father, being animated with a laudable and pious zeal for extending the christian religion, and also the territories of our empire hath humbly besought leave of us, that he may transport, by his own industry and expence, a numerous colony of the English nation, to a certain region, hereinafter described, in a country hitherto uncultivated, in the parts of America, and partly occupied by savages, having no knowledge of the Divine Being, and that all that region, with some certain privileges and jurisdictions, appertaining unto the wholesome government and state of his colony and region aforesaid may by our royal high*b*ess be given, granted, and confirmed unto him, and his heirs.

III. Know ye therefore, that we encouraging with our royal favour, the pious and noble purpose of the aforesaid barons of Baltimore, of our special grace, certain knowledge, and mere motion, have given, granted and confirmed, and by this our present charter, for us, our heirs and successors, do give grant and confirm, unto the aforesaid Caecilius, now baron of Baltimore, his heirs and assigns, all that part of the peninsula or chersonese, lying in the parts of America between the Ocean on the East and the bay of Chesopeake on the West, divided from the residue thereof by a right line drawn from the promontory, or head land, called Watkins point, situate upon the bay aforesaid, near the river of Wighcoc, on the West unto the main ocean on the East: and between that boundary on the South unto that part of the bay of Delaware on the North which lieth under the fortieth degree of North latitude from the aequinoctial, where New England is terminated: And all the tract
2270 of that land within the metes underwritten, (that is to say,) passing from the said bay, called Delaware bay, in a right line, by the degree aforesaid, unto the true meridian of the first fountain of the river of Pottowmack, thence verging towards the South unto the further bank of the said river, and following the same on the West and south, unto a certain place called Cinquack,

situate near the mouth of the said river, where it disembogues into the aforesaid bay of Chesopeake, and thence by the shortest line unto the aforesaid promontory or place, called Watkin's Point; so that the whole tract of land divided by the line aforesaid, between the main ocean and Watkin's Point, unto the promontory called Cape Charles, and every the appendages thereof may entirely remain excepted for ever to us our heirs and successors.

IV. Also we do grant and likewise confirm unto the said baron of Baltimore, his heirs and assigns all islands and islets, within the limits aforesaid, all and singular the islands and islets, from the eastern shore of the aforesaid region, towards the east, which have been or shall be formed in the sea, situate within ten marine leagues from the said shore, with all and singular the ports, harbours, bays, rivers and straits belonging to the region or islands aforesaid, and all the soil, plains, woods, mountains, marshes, lakes, rivers, bays and straits, situate, or being within the metes, bounds, and limits aforesaid, with the fishings of every kind of fish, as well of whales, sturgeons, and other royal fish, as of other fish, in the sea, bays, straits or rivers, within the premises, and the fish there taken: And moreover all veins, mines and quarries, as well opened as hidden, already found, or that shall be found within the region, islands or limits aforesaid of gold, silver, gems and precious stones, and any other whatsoever whether they be of stones, or metals, or of any other thing or matter whatsoever: And furthermore the pat-
2271 ronages and advowsons of all churches which (with the increasing worship and religion of Christ) within the said region, islands, islets and limits aforesaid, hereafter shall happen to the be built, together with licence and faculty of erecting and founding churches, chapels, and places of worship in convenient and suitable places, within the premises and of causing the same to be dedicated and consecrated according to the ecclesiastical laws of our Kingdom of England, with all and singular such, and as ample rights, jurisdictions, privileges, prerogatives, royalties, liberties, immunities, and royal rights, and temporal franchises whatsoever as well by sea as by land, within the region, islands, islets and limits aforesaid to be had exercised, used and enjoyed as any bishop of Durham, within the bishoprick or county palatine of Durham, in our kingdom of England, ever heretofore hath had, held, used or enjoyed, or of right could or ought to have, hold, use or enjoy.

V. And we do by these presents, for us, our heirs and successors, make, create, and constitute him, the now baron of Baltimore and his heirs, the true and absolute lords and proprietaries of the region aforesaid and of all other the premises (except the before excepted) saving always the faith and allegiance and sovereign dominion due to us, our heirs and successors, to have, hold, possess and enjoy the aforesaid region, islands, islets and other the premises, unto the aforesaid now baron of Baltimore, and to his heirs and assigns to the sole and proper behoof and use of him the now baron of Baltimore, his heirs and assigns forever: To hold of Us, our heirs and successors, kings of England, as of our castle of Windsor, in our

County of Berks in free and common soccage, by fealty only for all services, and not in capite, nor by knights service, yielding therefore unto Us, our heirs and successors two Indian arrows of
2272 those parts, to be delivered at the said castle of Windsor, every year on Tuesday in Easter week; and also the fifth part of all gold and silver ore which shall happen from time to time, to be found within the aforesaid limits.

VI. Now that the aforesaid region, thus by us granted and described may be eminently distinguished above all other regions of that territory, and decorated with more ample titles, Know ye, that we, of our more especial grace, certain knowledge, and mere motion, have thought fit that the said region and islands be erected into a province as out of the plenitude of our royal power and prerogative, We do, for us, our heirs and successors, erect and incorporate the same into a province, and nominate the same Maryland, by which name we will that it shall from henceforth be called.

VII. And forasmuch as we have above made and ordained the aforesaid now baron of Baltimore, the true lord and proprietary of the whole province aforesaid, Know ye therefore further, that We, for us, our heirs and successors do grant unto the said now baron (in whose fidelity, prudence, justice, and provident circumspection of mind we repose the greatest confidence) and to his heirs, for the good and happy government of the said province, free, full and absolute power, by the tenor of these presents, to ordain, make and enact laws, of what kind soever, according to their sound discretions, whether relating to the public state of the said province or the private utility of individuals, of and with the advice, assent, and approbation of the freemen of the same province, or of the greater part of them or of their delegates or deputies, whom we will shall be called together for the framing of laws when, and as often as need shall require, by the aforesaid now baron of Baltimore, and his heirs, and in the form which shall seem best to him or
2273 them, and the same to publish under the seal of the aforesaid now baron of Baltimore, and his heirs, and duly to execute the same upon all persons for the time being, within the aforesaid province and the limits thereof, or under his or their government and power, in sailing towards Maryland, or thence returning outward bound, either to England, or elsewhere, whether to any other part of our, or any foreign dominions, wheresoever established, by the imposition of fines, imprisonment, and other punishment whatsoever; even if it be necessary, and the quality of the offence require it, by privation of member, or life, by him the aforesaid now baron of Baltimore, and his heirs, or by his or their deputy, lieutenant, judges, justices, magistrates, officers and ministers to be constituted and appointed according to the tenor and true intent of these presents, and to constitute and ordain, judges, justices, magistrates and officers, of what kind, for what cause, and with what power soever, within that land, and the sea of those parts, and in such form as to the said now baron of Baltimore, or his heirs, shall seem most fitting: And also to remit, release, pardon and abolish all crimes and offences whatsoever against such laws, whether before, or

after judgment passed; And to do all and singular other things belonging to the completion of justice, and to courts praetorian judicatories, and tribunals, judicial forms and modes of proceeding, although express mention thereof in these presents be not made; and, by judges by them delegated to award process, hold pleas and determine in those courts, praetorian judicatories and tribunals, in all actions, suits, causes and matters whatsoever, as well criminal as personal, real and mixed, and praetorian: Which said laws, so to be published as above said, We will enjoin, charge and command to be most absolute and firm in law, and to be kept in those parts by all the subjects and liege-men of us, our heirs and successors so
2274 far as they concern them, and to be inviolably observed under the penalties therein expressed or to be expressed. So nevertheless that the laws aforesaid be consonant to reason, and be not repugnant or contrary, but (so far as conveniently may be) agreeable to the laws statutes, customs and rights of this our kingdom of England.

VIII. And forasmuch as, in the government of so great a province, sudden accidents may frequently happen, to which it will be necessary to apply a remedy, before the freeholders of the said province their delegates or deputies can be called together for the framing of laws; neither will it be fit that so great a number of people should immediately on such emergent occasion be called together, We therefore, for the better government of so great a province, do will and ordain and by these presents for Us, our heirs and successors, do grant unto the said now baron of Baltimore, and to his heirs, that the aforesaid now baron of Baltimore, and his heirs, by themselves, or by their magistrates and officers, thereunto duly to be constituted as aforesaid, may, and can make and constitute fit and wholesome ordinances from time to time, to be kept and observed within the province aforesaid as well for the conservation of the peace, as for the better government of the people inhabiting therein, and publicly to notify the same to all persons whom the same in any wise do or may affect. Which ordinances we will to be inviolably Observed within the said province, under the pains to be expressed in the same; So that the said ordinances be consonant to reason and be not repugnant nor contrary, but, (so far as conveniently may be done) agreeable to the laws, statutes or rights of our kingdom of England: And so that the same ordinances do not, in any sort, extend to oblige, bind, charge or take away the right or interest of any person or persons, of, or in member, life, freehold, goods or chattels.

2275 IX. Furthermore that the new colony may more happily increase by a multitude of people resorting thither, and at the same time may be more firmly secured from the incursions of savages or of other enemies, pirates and ravagers: We therefore for Us, our heirs and successors, do by these presents give and grant power, licence and liberty to all the liege men and subjects present and future, of Us, our heirs and successors except such to whom it shall be expressly forbidden to transport themselves and their families to the said province, with fitting vessels, and suitable provisions,

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and therein to settle, dwell and inhabit; and to build and fortify castles, forts and other places of strength, at the appointment of the aforesaid now baron of Baltimore, and his heirs for the public and their own defence; the statute of fugitives or any other whatsoever to the contrary of the premises in any wise notwithstanding.

X. We will also, and of our more abundant grace, for Us, our heirs and successors do firmly charge constitute ordain and command, that the said province be of our allegiance; and that all and singular the subjects and liegemen of us, our heirs and successors transplanted or hereafter to be transplanted into the province aforesaid, and the children of them, and of others their descendants, whether already born there, or hereafter to be born, be and shall be natives and liegemen of us, our heirs and successors, of our kingdom of England and Ireland; and in all things shall be held treated, reputed, and esteemed as the faithful liege-men of us and our heirs and successors, born within our kingdom of England; also lands tenements revenues services, and other hereditaments whatsoever, within our kingdom of England and other our dominions to inherit or otherwise purchase, receive, take, have, hold buy and possess, and the same to use and enjoy and the same to give, sell alien and bequeath; and
2276 likewise all privileges franchises and liberties of this our kingdom of England, freely, quietly and peaceably to have and possess, and the same may use and enjoy in the same manner as our liege-men born or to be born within our said kingdom of England, without impediment, molestation, vexation, impeachment or grievance of us, or any of our heirs or successors; any statute, act, ordinance or provision, to the contrary thereof notwithstanding.

XI. Furthermore, that our subjects may be incited to undertake this expedition with a ready and cheerful mind: Know ye that We, of our especial grace certain knowledge, and mere motion, do by the tenor of these presents give and grant as well to the aforesaid baron of Baltimore, and to his heirs, as to all other persons who shall from time to time repair to the said province either for the sake of inhabiting or of trading with the inhabitants of the province aforesaid full licence to ship and lade in any the parts of us, our heirs and successors all and singular their goods, as well movable as immovable, wares and merchandises likewise grain of what sort soever and other things whatsoever necessary for food and clothing, by the laws and statutes of our kingdoms and dominions, not prohibited to be tran-ported out of the said kingdoms; and the same to tran-port, by themselves or their servants or assigns, into the said province, without the impediment or molestation of us, our heirs or successors, or of any officers of us our heirs or successors, (saving unto us, our heirs and successors, the impositions, subsidies, customs and other dues payable for the same goods and merchandises) any statute, act, ordinance or other thing whatsoever to the contrary notwithstanding.

XII. But because, that in so remote a region, placed among so many barbarous nations, the incursions as well of the barba-
2277 rians themselves as of other enemies pirates and ravagers, probably will be feared, therefore we have given, and for us,

our heirs and successors, do give by these presents as full and unrestrained power as any captain-general of an army ever hath had, unto the aforesaid now baron of Baltimore, and to his heirs and assigns by themselves, or by their captains, or other officers, to summon to their standards and to array all men of whatsoever condition or wheresoever born, for the time being, in the said province of Maryland to wage war, and to pursue even beyond the limits of their province, the enemies and ravagers aforesaid, infesting, those parts by land and by sea, and (if God shall grant it) to vanquish and captivate them, and the captives to put to death, or, according to their discretion to save, and to do all other and singular the things which appertain, or have been accustomed to appertain unto the authority and office of a captain-general of an army.

XIII. We also will, and by this our charter do give unto the aforesaid now baron of Baltimore, and to his heirs and assigns, power, liberty and authority, that in case of rebellion, sudden tumult, or sedition if any (which God forbid) should happen to arise, whether upon land within the promise aforesaid, or upon the high sea in making a voyage to the said province of Maryland or in returning thence, they may by themselves or by their captains or other officers, thereunto deputed under their seals (to whom we for us, our heirs and successors by these presents, do give and grant the fullest power and authority) exercise martial laws as freely and in as ample manner and form as any Captain-general of an army by, by virtue of his office may or hath accustomed to use the same against the seditions authors of innovations in those parts, withdrawing themselves from the government of him or them, refusing to serve in
2278 war, flying over to the enemy, exceeding their leave of absence, deserters, or otherwise howsoever offending against the rule, law or discipline of war.

XIV. Moreover, lest in so remote and far distant a region every access to honours and dignities may seem to be precluded, and utterly barred, to men well born, who are preparing to engage in the present expedition, and desirous of deserving well, both in peace and war of Us and our kingdom; for this cause We for Us, our heirs and successors do give free and plenary power to the aforesaid now baron of Baltimore, and to his heirs and assigns to confer favours, rewards and honours upon such subjects, inhabiting within the province aforesaid, as shall be well deserving, and to adorn them with whatsoever titles and dignities they shall appoint; (so that they be not such as are now used in England) also to erect and incorporate Towns into boroughs, and boroughs into cities, with suitable privileges and immunities according to the merits of the inhabitants, and convenience of the places; and to do all and singular other things in the premises which to him or them shall seem fitting and convenient; even although they shall be such as in their own nature, require a more special commandment and warrant than in these presents may be expressed.

XV. We will also and by these presents do, for us, our heirs and successors give and grant licence by this our charter unto the aforesaid now baron of Baltimore, his heirs and assigns and to all per-

sons whatsoever, who are, or shall be residents and inhabitants of the province aforesaid freely to import and unlade, by themselves, their servants, factors or assigns, all wares and merchandises whatsoever, which shall be collected out of the fruits and commodities of the said province whether the product of the land or the
2279 sea, into any the ports whatsoever of us, our heirs and successors of England or Ireland or otherwise to dispose of the same there; and if need be, within one year to be computed immediately from the time of unlading thereof, to lade the same merchandises again, in the same, or other ships, and to export the same to any other countries they shall think proper whether belonging to us, or any foreign power which shall be in amity with us, our heirs or successors: Provided always that, they be bound to pay for the same to us, our heirs and successors, such customs and impositions, subsidies and taxes, as our other subjects of our kingdom of England, for the time being, shall be bound to pay, beyond which we will that the inhabitants of the aforesaid province of the said land, called Maryland, shall not be burthened.

XVI. And furthermore, of our own ample special grace, and of our certain knowledge, and mere motion We do, for Us our heirs and successors, grant unto the aforesaid now baron of Baltimore his heirs and assigns, full and absolute power and authority to make, erect and constitute, within the province of Maryland and the islands and islets aforesaid such, and so many seaports, harbours, creeks, and other places of unlading and discharge of goods and merchandises out of ship boats, and other vessels and of lading in the same and in so many, and such places, and with such rights jurisdictions, liberties and privileges unto such ports respecting, as to him or them shall seem most expedient: And that all and every the ships boats, and other vessels whatsoever coming to or going from the province aforesaid for the sake of merchandising, shall be laden and unladen at such ports only as shall be so erected and constituted by the said now baron of Baltimore, his heirs and assigns any usage custom or any other thing whatsoever to the contrary not-
2280 withstanding. Saving always to us our heirs and successors and to all the subjects of our kingdom of England and Ireland of us, our heirs and successors the liberty of fishing for sea fish as well in the sea, bays straits and navigable rivers, as in the harbours bays, and creeks of the province aforesaid; and the privilege of salting and drying fish on the shores of the same province; and for that cause to cut down and take hedging wood and twigs there growing, and to build huts and cabins necessary in this behalf in the same manner as heretofore they reasonably might or have used to do. Which liberties and privileges, the said subjects of us, our heirs and successors, shall enjoy, without notable damage or injury in any wise to be done to the aforesaid now baron of Baltimore his heirs or assigns, or to the residents and inhabitants of the same province in the ports, creeks, and shores aforesaid and especially in the woods and trees there growing. And if any person shall do damage or injury of this kind he shall incur the peril and

pain of the heavy displeasure of us, our heirs and successors and of the due chastisement of the laws, besides making satisfaction.

XVII. Moreover, We will appoint and ordain and by these presents, for Us, our heirs and successors do grant unto the aforesaid now baron of Baltimore, his heirs and assigns, that the same baron of Baltimore, his heirs and assigns from time to time for ever shall have and enjoy the taxes and subsidies payable, or arising within the ports harbours, and other creeks and places aforesaid, within the province aforesaid for wares bought and sold and things there to be laden or unladen, to be reasonably assessed by them, and the people there as aforesaid, on emergent occasion; to whom we grant power by these presents for us, our heirs and successors to assess and impose the said taxes and subsidies there upon just cause and in due proportion.

2281 XVIII. And furthermore, of our special grace, and certain knowledge and mere motion We have given granted and confirmed and by these presents, for Us, our heirs and successors, do give, grant, and confirm unto the aforesaid now baron of Baltimore, his heirs and assigns full and absolute license, power and authority, that he the aforesaid now baron of Baltimore, his heirs and assigns, from time to time hereafter, forever, may and can, at his or their will and pleasure, assign, alien, grant, demise or enfeoff so many, such and proportionate parts and parcels of the premises, to any person or persons willing to purchase the same as they shall think convenient to have and to hold to the same person or persons willing to take or purchase the same, and his and their heirs and assigns, in fee-simple or fee-tail, or for term of life, lives or years; to hold of the aforesaid now baron of Baltimore, his heirs and assigns, by so many, such and so great services, customs and rents of this kind, as to the same now baron of Baltimore, his heirs and assigns shall seem fit and agreeable and not immediately of us, our heirs or successors. And we do give and by these presents, for us, our heirs and successors, do grant to the same person and persons and to each and every of them, licence, authority and power that such person and persons, may take the premises, or any parcel thereof of the aforesaid now baron of Baltimore, his heirs and assigns and holds the same to them and their assigns, or their heirs, of the aforesaid baron of Baltimore, his heirs and assigns, of what estate of inheritance soever in fee-simple, or fee tail, or otherwise, as to them and the now baron of Baltimore, his heirs and assigns, shall seem expedient; the statute made in the parliament of lord Edward, son of king Henry, late king of England, our progenitor, commonly called the "Statute Quia Emptores Terrarum," heretofore published in our kingdom of England, or any other Statute, act, ordi-

2282 nance, usage law or custom or any other thing, cause or matter to the contrary thereof heretofore had done published, ordained or provided to the contrary thereof notwithstanding.

XIX. We also, by these presents, do give and grant licence to the same baron of Baltimore, and to his heirs to erect any parcels of land within the province aforesaid, into manors, and in every of those manors, to have and to hold a court-baron, and all things

which to a court-baron do belong; and to have and to keep view of frank-pledge for the conservation of the peace and better government of those parts, by themselves and their stewards, or by the lords for the time being to be deputed, of other of those manors when they shall be constituted, and in the same to exercise all things to the view of frank-pledge belonging.

XX. And further we will and do, by these presents, for us, our heirs and successors, covenant and grant to and with the aforesaid, now baron of Baltimore, his heirs and assigns, that we, our heirs and successors, at no time hereafter, will impose, or make or cause to be imposed, any impositions, customs or other taxations, quotas or contributions whatsoever, in or upon the residents or inhabitants of the province aforesaid for their goods, lands or tenements within the same province or upon any tenements, lands, goods or chattels within the province aforesaid, or in or upon any goods or merchandises within the province aforesaid or within the ports or harbours of the said province, to be laden or unladen: And we will and do, for us, our heirs and successors, enjoin and command that this our declaration shall from time to time, be received and allowed in all our courts and praetorian judicatories, and before all the judges whatsoever of us, our heirs and successors, for a sufficient and
2283 lawful discharge payment, and acquittance thereof, charging all and singular the officers and ministers of us, our heirs and successors and enjoining them, under our heavy displeasure, that they do not at any time presume to attempt anything to the contrary of the premises or that may in any wise contravene the same, but that they, at all times, as is fitting, do aid and assist the aforesaid now Baron of Baltimore, and his heirs, and the aforesaid inhabitants and merchants of the province of Maryland aforesaid, and their servants and ministers, factors and assigns in the fullest use and enjoyment of this our charter.

XXI. And furthermore we will, and by these presents, for us, our heirs and successors, do grant unto the aforesaid now baron of Baltimore his heirs and assigns, and to the freeholders and inhabitants of the said province, both present and to come, and to every of them that the said province, and the freeholders or inhabitants of the said colony or country, shall not henceforth be held or reputed a member or part of the land of Virginia, or of any other colony already transported, or hereafter to be transported, or be dependent on the same, or subordinate in any kind of government, from which we do seperate both the said province, and inhabitants thereof, and by these presents do will to be distinct, and that they may be immediately subject to our crown of England, and dependent on the same forever.

XXII. And if, peradventure, hereafter it may happen, that any doubts or questions should arise concerning the true sense and meaning of any word, clause or sentence, contained in this our present charter, We will charge and command, that interpretation to be applied, always, and in all things, and in all our courts and judicatories whatsoever, to obtain which shall be judged to be the

more beneficial, profitable, and favourable to the aforesaid
2284 now baron of Baltimore, his heirs and assigns: Provided always that no interpretation thereof be made, whereby God's holy and true Christian religion, or the allegiance due to Us, our heirs and successors, may in any wise suffer by change, prejudice, or diminution; although express mention be not made in these presents of the true yearly value or certainty of the premises or of any part thereof or of other gifts and grants made by us, our heirs and predecessors, unto the said now lord Baltimore, or any statute, act, ordinance, provision, proclamation or restraint heretofore had, made, published ordained or provided, or any other thing cause or matter whatsoever to the contrary thereof in any wise notwithstanding.

XXIII. In Witness whereof we have caused these our letters to be made patent, Witness ourself at Westminster, the twentieth day of June, in the eighth year of our reign.

That the said charter or letters patent with the translation aforesaid were accepted by the said baron of Baltimore, and by the authority thereof, legislative assemblies were convened and regular government organized, which at different times recognized the said charter or letters patent as the muniment and evidence of the territorial limits and boundaries of Maryland, of the prerogatives and jurisdictions of the Proprietary, and of the rights, privileges and liberties of the freemen and inhabitants within those limits and boundaries, as will appear by their acts ordinances, resolutions and proceedings among the records of the said province.

That the said Charter or letters patent with the translation aforesaid, were by the authority of the legislative assemblies and of the government aforesaid, prefixed to, published, recorded and
2285 imbodied with the several collections of the provincial laws compiled at different times, that the limits and boundaries of Maryland the prerogatives and jurisdictions of the Proprietary government, and the fundamental principles and authority, by which those laws were enacted might be perpetuated and publicly known: that the said record and publication of the charter with the translation aforesaid hitherto have been and are still received and admitted as legal and competent evidence by the judicial, executive, and legislative functionaries of Maryland, and by other tribunals and authorities elsewhere; They were also recognized in the declaration of rights made in the year 1776 by the freemen of Maryland in convention.

That at November session 1798 it was resolved by the General Assembly of Maryland among other things that William Kitty be appointed to revise the acts of assembly of this State, and to prepare an edition thereof including all public acts then in force from the year 1692, to the end of that session inclusive to be accompanied with a full and complete index to the whole, compiled in the manner of Baron's edition of the laws of Maryland: It was also resolved that the said William Kitty include in the said collection the original Charter to Lord Baltimore, bill of rights, the constitution of this State as originally adopted by the convention, together with the

several alterations that have been made to the said constitution by acts of assembly since that period. That in pursuance of the said resolutions the said William Kitty did include in the said collection the original charter to Lord Baltimore in the same manner and form, and in the same words as herein before stated and set forth,
2286 which said collection and original charter so included as aforesaid, were, by authority of the legislature, published and made a part of the records of Maryland.

That, when the said province was granted, the South Branch (altho' unexplored & but little known) was and still continues to be the main source, and essential part, and the principal course of the river Potowmack, extending westerly upwards of sixty miles further and with a wider, deeper and more copious stream than the North Branch, which was then and still continues relatively but a small tributary stream.

That the first fountain of the said South branch became and was, as designated and described by the said charter or letters patent, the true meridian of the Western line and boundary of Maryland, and the said river Potowmack together with the South Branch aforesaid, being part and the main course of the same river, from the said first fountain or the further bank thereof unto a certain place then called Cinquack (now Smith's Point) near the mouth of the said river, where it disembogues into the aforesaid bay of Chesopeake, became and was, as designated and described by the said charter, the Southern and South-Western line and boundary of Maryland.

That for many years after the grant aforesaid large tracts of land, adjoining and surrounding the Western and Southern boundaries aforesaid, were and remained unsettled, wild and uncultivated, the haunts of Savages and hostile Indians, defenceless and exposed to their ravages and incursions and the lands were of little value, which prevented or delayed the actual location and ascertainment of the first fountain of the river Potowmack and of the Western and Southern boundaries aforesaid as designated and described in the Charter aforesaid.

2287 That long before the grant of the province of Maryland, the colony or province of Virginia became and was a royal government and the crown of England being entitled to and possessing the territory, dominion and sovereignty thereof, James the second the reigning king of England, in right of the crown, many years after the grant aforesaid, granted and transferred to Thomas Lord Culpepper certain lands lying in the Northern Neck of Virginia, defined and described in the letters patent to be all that entire tract, territory or parcel of land situate, lying and being in America and bounded with-in the heads of the rivers Rappahannock and Quirirough or Potowmack river, the courses of the said rivers as they are commonly called and known by the inhabitants and descriptions of those parts, and the Chesapeake bay, that the territory or parcel of land so granted, devolved by inheritance on Lord Fairfax. That the western line dividing the said land from the colony or province of Virginia, and the calls and boundaries thereof never having been

run, settled, defined or located, disputes and controversies arose between the government of Virginia and Lord Fairfax and his heirs in relation to conflicting territorial claims. That in consequence of those disputes sometime about the year seventeen hundred and forty eight the Government of Virginia and Lord Fairfax set up a stone boundary near or about the head of the North branch of Potowmack as the supposed or pretended head spring of *of* the said river Potowmack, and from thence run and marked a line to the supposed head spring of the Rappahannock, commonly called the Conway to be and remain the established Western and dividing line of the said land granted to Lord Culpepper, from the territories of the Government of Virginia *ex parte* and without the knowledge or con-
2288 sent of the Proprietary of Maryland or of his government or officers. That some time in the year seventeen hundred and fifty three the Proprietary having been informed of the agreement and settlement of the stone boundary and line aforesaid by and between the authorities of Virginia and Lord Fairfax and of their claim being extended to the North Branch objected to such claims & the proceedings thereon and remonstrated by his letter and instructions to Governor Sharpe which were presented by him to his council in August 1753, in alluding to the Fairfax grant he remarked that the government of Virginia had undertaken to ascertain the limits of his charter and that the commissioners instead of stopping at the South Branch which runs from the first fountain of the Potowmack had gone even to the North Branch; that if any such adjustment was made he had no knowledge of his predecessor being a party to it, and therefore concluded by it. He therefore directed the Governor to obtain early intelligence of the manner in which the boundaries were settled by these commissioners, and to apprise Lord Fairfax of his desire to adjust that boundary with him, and at the same time he commanded the Governor to keep a good look out and prohibit settlements under Fairfax in the Country North of the South Branch: where upon the council summoned Colonel Thomas Cresap one of the settlers in the Western part of the province, who had knowledge of the course and extent of these branches. The said Thomas Cresap attended at the next session of the Council in September 1753, and informed them on examination that in his opinion the South Branch of the Potowmack was the longest stream because it continued, as he thought, the longest stream even from its mouth and ran about sixty miles further in a North Western direction, than did the North Branch, as will more fully appear by reference to the record of the proceedings of the
2289 executive council of Maryland transcripts or copies of which marked exhibits A & B are herewith filed and which the complainant prays may be taken and made a part of this bill. That the Governor afterwards on the 12th day of September 1753 prepared and sent a letter to Lord Fairfax with the consent of the board, in which he informed him of the instructions received from the Proprietary, and that he had obtained such information as induced him to believe that there had been some mistake in fixing the fountain head of the Potowmac at the source of the North Branch;

as the relative length of the two branches and other circumstances concurred to show that the South Branch commonly "Wappacomo" is the main and principal course of that river, and expressed a hope that Lord Fairfax would concur with him in causing an examination of the two Branches. That the South Branch had never been thoroughly explored and traced to its source, that such examination into its course, length, width and depth would bring the matter to a nearer degree of certainty as will more fully appear by reference to the record of the proceedings of the Executive council of Maryland, a transcript of copy of which marked exhibit B. is herewith filed as above and to which the complainant refers. That afterwards on the 17th day of October 1753 the Governor received the letter of Lord Fairfax dated 24, Sep. 1753, and laid the same before the council who ordered the same to be recorded, in which Lord Fairfax acknowledged the receipt of the Governor's letter as stated above in Exhibit B. and observed that he perceived Lord Baltimore designed to dispute with him, which was the head spring of Potowmack, the South, or North Branch, as run out between his Majesty and himself, that the South branch would be much to his advantage, and therefore thought it improper for him to appear therein and that the Governor of Virginia and the Governor of Maryland should
2290 transact the affair, that if Lord Baltimore should obtain his demand, he Lord Fairfax would insist upon a new line between his Majesty and himself to the Southward as will more fully appear by reference to the records of the proceedings of the executive council of Maryland, a transcript or copy of which marked exhibit C. is herewith filed and which the complainant prays may be taken and received as a part of this bill. That, about the time the said boundary and dividing line between the government of Virginia and Lord Fairfax were adjusted and established as aforesaid, the Proprietary of Maryland was engaged in a long and protracted dispute and controversy with the Proprietary of Pennsylvania in relation to the Northern and Eastern boundaries of Maryland and had no knowledge or notice of *of*, nor was he party to the proceedings relative to their dispute and establishment of the boundary and line between them as aforesaid, and cannot in law or equity be concluded or bound by them in the settlement and location of the Western and Southern boundaries of Maryland, as defined and described in the charter aforesaid: That the Proprietary and constituted authorities of Maryland have never consented to, or acquiesced in the establishment of the boundary & line between Virginia and Lord Fairfax made and fixed by them as aforesaid, but on the contrary have at all times objected to the same and have continually asserted and claimed the first fountain of the South branch of Potomac to be the true meridian by which the western line of Maryland is to be run and the river Potomac from the said fountain to the mouth thereof to be the ascertained and defined Southern limits and boundaries of Maryland according to the true intent and meaning of the charter aforesaid. That the prosecution of the claim of the Proprietary by the constituted authorities of

Maryland to the South branch of the Potomac, and the
2291 necessary efforts to explore and locate the same to its first fountain or source, were suspended and retarded, from the year 1753 until about the year 1770, by the French and Indian wars waged on the frontiers and within the territorial limits of Maryland and by the occupation of all those lands surrounding and lying between the North and South branches aforesaid and to the westward thereof, by Savages and hostile Indians; and also by a proclamation, issued by the king of Great Britain, in the year seventeen hundred and sixty three, prohibiting the colonial governments from granting any lands, or making settlements west of the sources or heads of any of the rivers, flowing into the Atlantic from the west and North West, and after the termination of these wars, by the agitation and resistance of the colonies to the stamp act attempted to be enforced upon them by the British Government.

That, after these difficulties had subsided the Governor of Maryland, some time in the year 1771 appointed commissioners, with authority to proceed to the head of the South branch of the Potomac, in search of its most western fountain, to get a meridian, and to ascertain the relative extent and bearings to the West of the first fountain of the North and South branches aforesaid; that the said commissioners undertook the trust, and after having made, in part, an actual survey and plot thereof, they reported to the Governor in the form of a letter signed by Thomas Cresap, one of the said commissioners, among other things, that agreeably to his Excellencys commission he (Thomas Cresap) proceeded to the head of the South Branch in company with the other two commissioners, and two surveyors, with a number of pack horses and choppers, and two chain carriers; that after a diligent search they found the most westerly fountain to be a fountain of the North fork of the South branch of the Potomac; that the spring from which they proceeded
2292 with their North line, was small but about a hundred roods from it, a little more easterly, broke out twelve springs, which made a large branch at once, that at a small distance from it over a small ridge was one of the fountains of James River, south of the other, and to the West, was a fountain of green briar as they were informed; that they made a small wall of stone around the spring, from which they proceeded, and covered it with a large broad stone, on which they cut these letters C. Ld B. the initials of the name and title of Lord Baltimore, from which they continued their line for upwards of nine miles, to a smart creek, about two or three roods wide running to the west as well as all the waters they crossed in the above distance and for some miles further the water continued running to the west; that the next water they came to was two branches of cheat and soon afterwards they left off running; that the reason of their breaking up and coming home before finishing was for want of provisions and money to pay off pack-horse-men and choppers; that the hire of pack horses was very high for they had killed three, and several of the others were not able to travel home; that since their return home they had received his Excellencys letter informing them, that a surveyor was coming to assist with some particulars

such as staff and plum, those they made use of in the same manner Mr. Dixon and Mason did in running the province line; that they were threatened very hard by some of the Virginia people before they set out, that fifty men were appointed to meet them, and take them prisoners; but they were not molested by any person: That on this survey of the two branches a plot was made by them on which the South and North branches were delineated with a meridian running through the head of each, and the meridian through the head of *of* the South branch was upwards of twenty moles more
2293 west than the meridian through the head of the North branch, which said report and plot on the survey af'd were deposited and now remain in the archives and among the records of the province as by reference thereto will more fully appear and which are ready to be produced when required.

That in November 1772 the board of Revenue constituted by the Proprietary, and consisting of the Governor the commissary general, the deputy Secretary, the Attorney General, and the judges of the land office, examined the accounts and vouchers of the said Colo. Thomas Cresap for necessaries paid by him as a commissioner appointed to run a true meridian line from the first fountain of the river Potomac, including an allowance to himself; John Revely and Doctor Charles Wheeler commissioners, and for two surveyors amounting in the whole to the sum of £1056.19 7 1/2 current money which were passed and allowed, and by order of his Lordship's commissioners paid out of the moneys arising from the sale of his manors and reserved lands; after the meridians were run and plotted by the said Thomas Cresap as aforesaid, the western lands still remaining unsettled, the Proprietary continued his former order making the Reserve and prohibiting surveys and grants of lands westward of *of* Fort Cumberland, in obedience to the command of the king's proclamation issued as aforesaid, and to avoid giving any offence and to avoid disputes with the Crown and Lord Fairfax in relation to the line settled between them, until a favorable opportunity should occur of bringing the matter and location of *of* his western boundary to the first fountain of the South Branch as aforesaid, before the King in Council. That afterwards in March 1774 the said Board of Revenue took off the Reserve, and passed a resolution that Surveys and grants of land Westward of Fort Cumberland might be made, and opened a land office for that purpose and
2294 several persons, availing themselves of this privilege, obtained warrants and made surveys of land not only to the west of Fort Cumberland but located their warrants westward of the meridian line drawn from the head of the North Branch of the Potomac river and to the westward of the Alleghany mountains; The Proprietary's agent and receiver general opposed these proceedings of the Board of Revenue as premature and impolitic, and contended that the Proprietors Noble predecessors had cautiously avoided giving any offence by granting lands to the Westward of the line settled between the crown and Lord Fairfax, for altho' there could not be a doubt but the fountain head of the South branch was the spot intended from which the meridian line was to be drawn as the

Western boundary of Maryland, yet they waited for a favourable opportunity of bringing this matter before the king in Council, when there could not be the least doubt of his Majesty's Equity and justice; and such an opportunity might soon occur as the Pennsylvanians had imprisoned an officer acting under commission, from Lord Dunmore, and his Lordship in return had caused three magistrates, under commission from Governor Penn, to be arrested and carried to Williamsburgh, that these steps might very soon bring the extension and boundaries of those Governments before his Majesty in council where only they could be settled, and should this be the case it would be a favourable time for the Proprietor to put in his claims to all the land lying to the Eastward of a meridian line drawn from the head spring of the South branch of the Potomac river, till it intersected the west line run between Maryland and Pennsylvania: that it was highly improper from these appearances, for the Proprietor or his officers to throw the first stone, by granting lands over the Alleghany mountains and that the office ought
2295 not to have been opened for granting lands to the westward of Fort Cumberland, and of a meridian drawn from the head of the North Branch to its intersection with the West line of the Province, that, however clear the right might be, a delay for exercising that right for a short time could not weaken it, or encourage the Virginians to consider it as a dereliction, that it would be more to the interest of the Proprietor to delay granting those lands until the dispute should be settled, than to bring on an abrupt contest by exercising the right, at that particular time; on the contrary the judges of the land office, in justification of their proceedings, contended and urged that the charter gave the Proprietor to the fortieth degree of North Latitude, thence West until it intersects a meridian from the first fountain of the Potowmack river, and as the late Proprietor had been lately at the expence of running a line to the head of the South Branch of that river, the limits of the Province ought not to be restricted or confined by his officers, that if *they* doubted the extension of his limits, such doubt would encourage the Virginians to begin to throw stones which they had never yet done, that it was to the interest of the Proprietor to make the Surveys and grants of lands lying to the westward as aforesaid, and the measures pursued by the judges of the land office by authority of the board of Revenue were consistent with policy and tended to promote the Proprietary's interest. In May 1774 the Board of Revenue took under consideration the subject and the letters, from the agent and general receiver to the judges of the land office with the answers thereto, and sustained them and approved their proceedings. The board admitted that the former Proprietors were not inclined to enter into contests with the Crown, but determined and were of opinion that the making of Surveys and issuing patents with a view to effect gradual and peaceable settlements under the Charter
2296 ought not then to be stopped, but continued, and might strengthen the Proprietor's right, whilst his reluctance and delay to claim and exercise it might weaken it and encourage the interposition of the Virginians, who had them done no acts, nor

made any grants to interfere with the Proprietors claim or rights whereupon the Board unanimously agreed to transmit copies of the said letters and answers to the Lord Proprietary together with their reasons in justification of the above measure adopted by them, as fully appears by the record of their proceedings, to which the complainant refers for more particular information. That the Proprietor was afterwards prevented, by the revolutionary war, from bringing the claim for the settlement of his western boundaries before the King in council, and in the year seventeen hundred and seventy six the territorial rights and government of the Proprietary together with the dominion of the British crown within the Province of Maryland were dissolved, and annulled by the declaration of Independence, whereby the State of Maryland became free and independent and thereby acquired the right of soil together with the Sovereignty, jurisdiction and dominion over the territories within, and to the extent of the limits and boundaries designated and described in and by the charter hereinbefore recited. The several facts aforesaid and charter hereinbefore stated being publicly and well known, and the Southern and Western boundaries aforesaid still remaining unsettled, The Commonwealth of Virginia, then a free and independent State, by the twenty first section of her constitution or form of Government, recognized the territorial rights of Maryland in the following words to wit, The territories contained within the charters erecting the colonies of Maryland, Pennsylvania,
North and South Carolina, are hereby ceded released and for
2297 ever confirmed to the people of those colonies respectively,
with all the rights of property, jurisdiction and government and all other rights whatsoever which might at any time heretofore have been claimed by Virginia, except the free navigation and use of the rivers Potowmack and Pocomake, with the property of the Virginia shores or strands bordering on either of the said rivers, and all improvements which have been or shall be made thereon: Whereupon the Delegates of Maryland elected by the authority of the people for the express purpose of forming a new Government, in full and free convention assembled adopted and unanimously passed the following resolutions to wit, Resolved unanimously, That it is the opinion of this convention that the State of Virginia hath not any right or title to any of the territory, bays, rivers, or waters, included in the charter granted by his Majesty Charles the first to Caecilius Calvert, baron of Baltimore.

Resolved unanimously that it is the opinion of this convention, that the sole and exclusive jurisdiction over the territory bays, rivers, and waters included in the said Charter, belongs to this State, and that the River Potowmack, and almost the whole of the river Pocomoke, being comprehended in the said Charter, the sole and exclusive jurisdiction over the said Potowmack and also over such part of the river Pocomoke as is comprehended in the said Charter belongs to this State.

That the war waged by Great Britain against the United colonies was prosecuted and continued with unusual severity until the end of the year 1782, and during that time no opportunity occurred

for ascertaining and adjusting the Western and Southern boundaries of Maryland.

That about that time or since the commonwealth of Vir-
2298 ginia wrongfully took possession of that tract of land or territory lying Eastward of the meridian line drawn from the first fountain of the South Branch of Potomac to the west line between Pennsylvania and Maryland, and between the North and South branches, and has since continued wrongfully to exercise jurisdiction over the same.

That the State of Maryland hath uniformly asserted and claimed that the true Western limit or boundary of Maryland was and is a line drawn from the first fountain of the South branch to the West line between Pennsylvania and Maryland and that the true Southern boundary was and is the Potomac from the first fountain of the South branch as described and granted by the charter above recited and that the claim of Virginia to any other dividing line was never acquiesced in or conceded by Maryland, that the claim as above stated has never been relinquished or abandoned, but on the contrary has been publicly and frequently urged and maintained by Maryland from the year 1788 until the year 1833 as appears by the act passed in the year 1783 regulating the allotments to the soldiers of the Western lands and by several legislative resolutions passed in the years 1795, 1796-1801-1810-1831 and 1833 to which the complainant refers for more particular information and which are ready to be produced when required.

That Governor Brook of Virginia acknowledged the receipt of the resolutions and admitted the question of dispute to be open with a promise to lay the Maryland proposition before his legislature as appears by his letter to Governor Stone dated January 9th 1796; also that Governor Tyler of Virginia in his letter to Governor Kent of Maryland acknowledged the receipt of the Maryland resolutions for the ascertainment and permanent settlement of the boundaries and admitted the matter in dispute to be of great importance,
2299 and the questions involved to be open for friendly settlement, as appears by his letters dated 4th May 1826 to which reference is made as above.

This complainant further states and avers, that by the Charter above recited and the fair construction thereof Maryland is justly entitled to the soil and the exclusive sovereignty and jurisdiction of and over the whole territory and tract of land described in the said charter, and extending westerly to the meridian line drawn from the first fountain to the South branch of the river Potomac to intersect the west dividing line between Pennsylvania and Maryland, and extending towards the South, from the said west dividing line, unto the further bank of the said river and binding therewith from the first fountain aforesaid on the West and South, unto a certain place formerly called Cinquack, now Smith's Point, situate near the mouth of the said river where it disembogues into the aforesaid bay of Chesapeake; and of all and every part thereof; and that the head spring or source of the South Branch aforesaid is and ought to be, by the true construction of the Charter aforesaid, the true meridian

of the first fountain of the River Potomack and meridian line drawn or run from the same due North to intersect the west dividing line between Pennsylvania and Maryland, is and ought to be the Western territorial boundary and limits of Maryland and the Potowmack from its first fountain aforesaid to Smith's Point near the mouth of the said river in the Chesapeake bay, is and ought to be the Southern and South Western boundary and limits of Maryland, and that the rights of soil, the Sovereignty and Jurisdiction over the lands, territories and premises lying and being Eastward of the said meridian line to the extent and within the boundaries and limits mentioned, defined and described in and by the said Charter, and over
2300 the citizens and inhabitants thereof, of right belong to and ought to be quietly and peaceably exercised and enjoyed by the State of Maryland:

And your complainant well hoped that the Commonwealth of Virginia would have accepted the friendly terms so frequently proposed to ascertain and adjust permanently the Western and Southern boundaries & limits of Maryland aforesaid in an amicable manner by commissioners, negotiations or otherwise, according to the true intent and meaning of the Charter and the concession made in the constitution of Virginia as aforesaid: But now so it is that the said Commonwealth of Virginia, intending to encroach upon and injure the said State of Maryland in her lawful rights since she became a Sovereign and independent State has wrongfully continued to hold possession of the said land and territory, of which the possession was so wrongfully taken as aforesaid, and to assert and exercise jurisdiction over the same, and has assessed, levied and collected taxes upon and of the inhabitants thereof, pretending that the Fairfax Stone near the head of the North branch of the Potomac is the true meridian of the first fountain of the River Potomac and the Western and Southern boundary of Maryland, whereas your complainant charges and insists and the truth is that the said Stone is not at the true meridian of the first fountain of Potomac, and is not the Western and Southern boundary of Maryland, that it was set up *ex parte*, by Lord Fairfax and the Government of Virginia as a boundary line between themselves, and not as a boundary of Maryland, and in fact is not set up at the first fountain of the North branch.

That the Proprietary of Maryland was not a party to the proceeding and had no notice or knowledge of it. That the constituted authorities of Virginia were interested in extending their
2301 limits and by establishing that boundary confined and restricted the territorial boundaries of Maryland, and enlarged their own. That the Government of Virginia and Lord Fairfax were never legally authorized to establish or settle the said Stone as a boundary of the territorial limits of Maryland, and Maryland is not, nor ought not to be affected or concluded by it.

All which actings, pretences and doings are contrary to Equity and good conscience and tend to the manifest wrong and injury of your complainant, and interfere with and prevent the exercise of that jurisdiction and sovereignty and of that enjoyment of territorial rights which by the laws of the land and the constitution of the

United States she is entitled to enjoy and exercise over the whole tract of land and territory mentioned and described in the Charter granted to Caecilius Calvert baron of Baltimore and hereinbefore recited and set forth, and over the citizens and inhabitants thereof according to her claim in this her bill of complaint made and set forth;

In tender consideration whereof and forasmuch as your complainant — remidiless in the premises, except in this honorable court where matters of controversy between two or more States are by the constitution of the United States made cognizable and relievable:

To the end therefore that the said Commonwealth of Virginia may full and perfect answer make to all and singular the facts charges and matters aforesaid, and herein set forth; and that the true meridian of the first fountain of the River Potowmack and the Western and Southern boundary lines of Maryland as aforesaid may be ascertained, located and permanently established according to the true intent and meaning and the fair construction of the above recited Charter, and that the rights of soil, of jurisdiction
2302 and Sovereignty of the State of Maryland to the whole tract of land and territory mentioned, described and granted in and by the said Charter hereinbefore recited and set forth, and running to the true meridian of the first fountain of the Potomac at the source or head spring of the South Branch thereof, may be restored and confirmed to the State of Maryland, and that the said State of Maryland may be quieted and remain in full and free enjoyment of her right of soil, and of her jurisdiction and Sovereignty, and that the title, jurisdiction and Sovereignty of the State of Maryland over the same be confirmed and established, by a decree of this Honorable court, and that your complainant may have such other and further relief in the premises as the nature of the case requires and deserves.

May it please this Honorable court to grant to the State of Maryland your complainant a writ of Subpœna issuing out of and under the seal of this Honorable court exercising Chancery jurisdiction to the Commonwealth of Virginia to be directed, commanding the said Commonwealth of Virginia at a certain day and under a certain pain, therein to be specified, to be and appear in this Honorable court, and then and there to answer all and singular the facts, matters charges and things herein set forth as aforesaid, and to stand to abide by, and perform such order direction and decree therein as to this Honorable court shall seem meet and proper.

STATE OF MARYLAND,
By JOSIAH BAYLY,
Attorney General of the Same State.

2303 EXHIBIT A.

At a Council held in the Council Chamber on Wednesday the 15th day of August in the third year of his Lordships Dominion Annoque Domini 1753.

Present:

His Excellency Horatio Sharpe, Esq., Governor.

The Honourable

Benjamin Tasker, Esqr.
Col. George Plater.
Edmond Jennings, Esqr.
Col. Charles Hammond.
Samuel Chamberlain, Esqr.
Col. Edward Lloyd.
Philip Thomas, Esquire.
Benjamin Young, Esqr.
Col. Benjamin Tasker.
Benedict Calvert, Esqr.

His Excellency is pleased to lay before this board the following Copy of his Lordship's instructions:

Whereas the right honourable Lord Viscount Fairfax has a grant of a large tract of land lying and running along the Banks of Potomack river on the Virginia side, and whereas I am informed the powers of government in Virginia have taken the liberty to ascertain the bounds and limits of his said Lordship's Grant running along the banks of the said river; which river to the further banks thereof is limited to me with its soil and water, and is a boundary between my province of Maryland and the Province of Virginia unto the fountain head of the said river; and whereas I am informed that commissioners have proce-ded therein and instead of their stopping at the South Branch which runs from the first fountain of Potowmack river, one of the boundaries of Maryland, have cros't to a branch running North whereby their endeavors are to g'ive
2304 limits and boundary marks prescribed by my royal charter subjecting me to great loss of country, and whereas it being not known to me that my predecessor was made a party to the settlement of such boundaries by the said Commissioners; and were it so such settlement would be invalid by virtue of my father's marriage articles, he being only tenant for life with reservation to me as tenant in tail. I therefore desire and require of you as soon as possibly you can to get intelligence how such boundaries have been or are settled by the said Commissioners with regard to Lord Fairfax and his grant; and at the same time, if opportunity serves you, you may communicate to Lord Fairfax that I am very desirous of settling proper limits conclusive between him and me in regard to my province of Maryland and his grant in Virginia, and in the mean time you must make and have a good lookout and warning given to such persons as shall venture to settle on such disputed Boundaries between my province of Maryland and the province of Virginia under the said grant to Lord Fairfax.

Ordered that the clerk of this Board write the following letter to Col. Cresap.

SIR: I am commanded by the Governor & Council to desire of you that you will not fail to be at Annapolis by the 2nd Day of next month as the business which requires this attendance concerns the Provincial bounds in Potowmack, you are also requested to bring with you what descriptions or others informations you may now have relative to that river and its several branches that further inquiry, if necessary may be directed.

I am S'r Your humble servant,

I. R.

To Col. Thomas Cresap.

2305 COUNCIL CHAMBER,
ANNAPOLIS, *July*, 10, 1834.

I certify that the foregoing is truly copied from a Record of "Council proceedings" from 1753 to 1767 remaining in the Executive Department.

THOS. CULBRETH,
Clerk of the Council.

EXHIBIT B.

At a Council held in the Council Chamber on Wednesday the 12th Day of September in the third year of his Lordship's Dominion Annoque Domini 1753.

Present:

His Excellency Horatio Sharpe Esqr. Governor.

The Honourable

Benjamin Tasker, Esquire.
Col. George Plater.
Edmund Jennings, Esqr.
Col. Charles Hammond.
Philip Thomas, Esquire.
Benjamin Young, Esqr.
Col. Benjamin Tasker.
Benedict Calvert, Esquire.

Colonel Cresap attending this board says that in his opinion the south Branch of Potowmack is the largest branch because it continues the big-est stream as he thinks from the mouth and runs about sixty miles North West further than the North Branch.

2306 His Excellency is pleased to lay before this board the following copy of a letter intended to be sent by him to the Right Honourable the Lord Fairfax.

MY LORD:

I have the honour of acquainting your Lordship with my appointment to this Government and at the same time expressing a sincere satisfaction from the hopes of being instrumental in forwarding a mutual benefit to your Lordship as well as the Lord Proprietary of this Province.

Lord Baltimore was pleased to charge me with an enquiry into the true meridian and place of the fountain head of Potowmack; The best information I have been hitherto able to procure gives me reason to believe there has been a mistake in fixing the spring head to the North branch since the length with other circumstances more properly denotes the Southern branch commonly called Wappacomo to be the main and principal course of that river. I am the more willing to be persuaded of the truth of this representation from the considerable advantage that will accrue to your Lordship. West branch I am informed, has never been thoroughly explored and traced to its source, but I flatter myself with having your Lordship's concurrence for such an examination into its course, length width and depth as may bring this matter to a nearer degree of certainty, and if that should appear to be the fountain head of Potowmack river, I shall not question but your Lordship will be for taking such measures as may ascertain the mutual limits of the two Proprietorships agreeable to the direction and true intentions of their respective charters.

2307 COUNCIL CHAMBER,
ANNAPOLIS, *July 14th*, 1834.

I certify that the foregoing is truly copied from a record of "Council proceedings" from 1753 to 1767 remaining in the Executive Department.

THOMAS CULBRETH,
Clerk of the Council.

EXHIBIT C.

At a Council held in the Council Chamber the 17th day of October in the third year of his Lordship's Dominion annoque Domini 1753.

Present:

His Excellency Horatio Sharpe Esqr. Governor.

The Honourable

Benjamin Tasker, Esqr.
George Plater, Esqr.
Samuel Chamberlain, Esqr.
Philip Thomas, Esqr.
Col. Benjamin Tasker.
Richard Lee, Esqr.
Benedict Calvert, Esqr.

His Excellency is pleased to lay before this Board the following letter:

FREDERICK, *September the 24th*, 1753.

SIR: Yours I received by Mr. Young, by which I perceive
2308 Lord Baltimore designs to dispute with this Province which is the head spring of Potowmeck the length or North Branch as run out by the Commissioners between his Majesty and me in the year 1736.

I am intirely—that the South would be much to my advantage and therefore think it improper for me to appear therein, and that the Governor of Virginia and your Excellency should transact that affair if his Lordship should obtain his demand. I must insist upon a new line between his Majesty and me to the Southward: I heartily wish the climate may be agreeable to your excellency, I remain

Sr your obedient servant

FAIRFAX.

To His Excellency Horatio Sharpe Governor of Maryland.

COUNCIL CHAMBER,
ANNAPOLIS, *July 14th*, 1834.

I certify that the foregoing is truly copied from a Record of "Council proceedings" from 1753 to 1767 remaining in the Executive Department.

THOS. CULBRETH,
Clerk of the Council.

(Endorsed:) The State of Maryland *vs.* The Commonwealth of Virginia. Bill in Chancery & three exhibits. The Clerk of the Supreme Court of the United States is requested to file the within bill & Exhibit A. B. C. Josiah Bayly, Attorney General of Maryland.

2309 (Endorsed:) The State of Maryland Compl't *vs.* The Commonwealth of Virginia. Filed 20 October 1834. Dismissed with costs 25th Jan'y 1836.

(Endorsed:) Supreme Court U. S. No. 1 Original, Oct. Term 1907. Maryland *v.* Virginia Filed Oct. 15th, 1907.
Office Supreme Court U. S. Filed Oct. 15 1907. James H. McKenney, Clerk.

2310 Maryland Laws, Acts of 1852, Chapter 275, Passed May 27, 1852.

An Act for Running and Marking the Western Boundary Line of This State.

Whereas, it is of great importance, that the western territorial limits of the State of Maryland be clearly defined, and her boundaries permanently established, And whereas, the true location of the Western line of Maryland, between the States of Maryland and Virginia, beginning at or near the Fairfax stone, on the north branch of the Potomac river, at or near its source, and running in a due line to the State line of Pennsylvania, is now lost and unknown, and all the marks have been destroyed by time or otherwise; And whereas, the States of Virginia and Maryland have both granted patents to the same tracts of land, at or near the supposed line, and as suits of ejectment are now pending in the Circuit Court for Allegany county, in the State of Maryland, by persons holding under Maryland pat-

ents against persons now in possession and holding land under patents granted by the State of Virginia, which cannot be justly settled without establishing said boundary line; Therefore,

SECTION I. Be it enacted by the General Assembly of Maryland, That the Governor, be, and he is requested to open a correspondence with the Governor of Virginia, in relation to tracing, establishing and making the said line; and in case the Legislature of Virginia shall pass an act providing for the appointment of a commissioner to act in conjunction with a commissioner on the part of Maryland, in the premises, then, and in such case the Governor be, and he is hereby authorized and required to appoint a commissioner,
2311 who, together with the commissioner who shall be appointed on the part of Virginia, shall cause the said line to be accurately surveyed, traced and marked with suitable monuments, beginning therefor at the said Fairfax's stone, and running thence due north, to the line of the State of Pennsylvania.

SEC. 2. And be it enacted, That it shall be the joint duty of the commissioners, after running, locating, establishing and marking the said line, to make a report setting forth all the facts touching the locating and marking said line; and it shall be the duty of the commissioners of each respective State, to forward copies of the joint report to each of their respective legislatures, and upon the ratification of such report by the State of Virginia and the State of Maryland, through their respective Legislatures, the said boundary lines shall be fixed and established so to remain forever, unless changed by mutual consent of the said States.

Endorsed: Supreme Court U. S. No. 1 Original. Oct. Term 1907. Maryland *v.* West Virginia. Filed Oct. 15, 1907. Office Supreme Court U. S. Filed Oct. 15, 1907. James H. McKenney, Clerk.

2312 Acts of Assembly, Session 1853-4, 56 & 8, Page 3.

General Acts.

Part I.

Chap. 1. An Act for Running and Marking the Boundary Line Between the States of Virginia and Maryland.

Passed March 3, 1854.

Whereas the general assembly of Maryland has passed an act for running and marking the boundary line between that state and the state of Virginia, beginning therefor at the Fairfax stone on the Potomac river, sometimes called the North branch of the Potomac river, at or near its source, and running thence due north to the line of the state of Pennsylvania; and whereas the legislature of the state of Maryland has requested the appointment of a commissioner on the part of this state to act in conjunction with the commissioner of Maryland to run and mark the said line; therefore,

1. Be it enacted by the general assembly, that the governor be and he is hereby authorized and required to appoint a commissioner, who, together with the commissioner who may be appointed on the part of Maryland, shall cause the said line to be accurately surveyed, traced, and marked with suitable monuments, beginning therefor at the said Fairfax stone, situated as aforesaid, and running thence due north to the line of the state of Pennsylvania.

2. It shall be the duty of the commissioners, after running, locating, establishing and marking the said line, to make a report, setting forth all the facts touching the same, and to forward
2313 copies of the joint report to their respective legislatures. And upon the ratification of such report by the legislatures of the states of Virginia and Maryland, the said boundary line shall be fixed and established, to remain forever, unless changed by mutual consent of the said states.

3. This shall be in force from its passage.

Endorsed: Supreme Court U. S. No. 1 Original, Oct. Term 1907. Maryland *v.* West Virginia. Filed Oct. 15, 1907. Office Supreme Court, U. S. Filed Oct. 15, 1907. James H. McKenney, Clerk.

2314 Maryland Laws, Acts of 1860, Chapter 385, Passed Mar. 5, 1860.

An Act for the establishment of the southeastern and northwestern boundary lines between this State, and the State of Virginia, and making further appropriation to complete the survey and marking of the same.

Section 1. Be it enacted by the General Assembly of Maryland, That the line established by the agreement of the commissioners authorized in the year sixteen hundred and sixty-eight, to fix the bounds of Virginia and Maryland, is hereby declared to be the true line of boundary between the two States on the Eastern Shore of Chesapeake bay, is a straight line from Smith's point, at the mouth of the Potomac, to the southernmost angle of the body of land defined by the aforesaid commissioner as Watkins' point.

Sec. 2. And be it further enacted, That the northwestern line of this State, is a line commencing at the Fairfax stone, at the head of the north branch of the Potomac river, and running thence due north to the southern line of the State of Pennsylvania, as surveyed in the year, eighteen hundred and fifty-nine, by the commissioners appointed by the State of Maryland and Virginia in conformity with the laws passed by the said States for that purpose.

Sec. 3. And be it further enacted, That the sum of ten thousand dollars or so much thereof as may be necessary, be and the same is hereby appropriated for the payment of this State's proportion of such expenses as may be required to complete the survey and record of said lines, and that the compensation of the commissioners on the part of this State, and that of the officer of the United States
2315 engineer employed under him, for services already rendered and to be rendered, shall be such reasonable compensation, as

the Governor may in his discretion allow; Provided, the same does not exceed a yearly salary of two thousand dollars to the former and of one thousand dollars to the latter, and the Comptroller is hereby directed to issue his warrant or warrants upon the Treasurer in pursuance of the Governor's order therefor, for the payment of such sums of money as may be hereby required.

SEC. 4. And be it enacted, That this act shall take effect from the date of its passage.

Endorsed: Supreme Court U. S. No. 1 Original, Oct. Term 1907. Maryland *v.* West Virginia, Filed Oct. 15, 1907. Office Supreme Court, U. S. Filed Oct. 15, 1907. James H. McKenney, Clerk.

2316 The constitution of Maryland of 1851, article 8, section 2. Said section is as follows:

"When that part of Alleghany county lying south and west of a line beginning at the summit of Big Back Bone or Savage Mountain where that mountain is crossed by Mason and Dixon's line, and running thence by a straight line to the middle of Savage River where it empties into the Potomac river, thence by a straight line to the nearest point or boundary of the State of Virginia, thence with said boundary to the Fairfax Stone, shall contain a population of ten thousand, and the majority of the electors thereof shall desire to separate and form a new county and make known their desire by petition to this legislature, the legislature shall direct, at the next succeeding election, that the judges shall open a book at each election district in said part of Alleghany county, and have recorded therein the vote of each elector 'for or against' a new county. In case the majority are in favor then said part of Alleghany county to be declared an independent county, and the inhabitants whereof shall have and enjoy all such rights and privileges as are held and enjoyed by the inhabitants of the other counties in this state, etc."

See Charters and Constitutions, part 1, page 857.

This constitution was formed by a convention which met at Annapolis, November 4, 1850, and completed its labors May 13, 1851. It was ratified by the people June 4, 1851.

Endorsed: Supreme Court U. S. No. 1 Original, Oct. Term 1907. Maryland *v.* West Virginia, Filed Oct. 15, 1907. Office Supreme Court, U. S. Filed Oct. 15, 1907. James H. McKenney, Clerk.

2317 Laws of Maryland, 1872.

CHAPTER 212, Page 313.

An Act to provide for taking the vote of the people for or against a new county in certain election districts in Allegany county at the election to be held in the fall of eighteen hundred and seventy-two.

SECTION 1. Be it enacted by the General Assembly of Maryland, That all that part of Allegany county lying south and west of a line

beginning at the summit of Big Back Bone or Savage Mountain, where that mountain is crossed by Mason's and Dixon's line, and running thence by a straight line to the middle of Savage River where it empties into the Potomac River; thence by a straight line to the nearest point or boundary of the State of West Virginia; then with the said boundary to the Fairfax Stone shall be a new county to be called the county of Garrett; provided the provisions of this Act as to taking consus of the people and the area of the said new county, and the sense of the people therein, shall be complied with in accordance with the Constitution of this State.

Endorsed: Supreme Court U. S. No. 1 Original, Oct. Term 1907. Maryland *v.* West Virginia. Filed Oct. 15, 1907. Office Supreme Court U. S. Filed Oct. 15, 1907. James H. McKenney, Clerk.

2318 Maryland Laws, Acts of 1865, Chapter 94, Passed March 16, 1865.

An Act to Assist Simon J. Martenet, in the Completion and Publication of His Map of Maryland.

Whereas, Simon J. Martenet, has made application to this General Assembly for assistance to aid him in completing and publishing his Map of Maryland; and whereas, the undertaking is highly meritorious, and if executed in accordance with his description, as contained in his published appeal to the Legislature, will be of great value to the State; therefore,

Section 1. Be it enacted by the General Assembly of Maryland, That the sum of three thousand dollars, be and same is hereby appropriated, to be paid to the said Simon J. Martenet, upon the conditions and in the manner hereinafter described.

Sec. 2. And be it enacted, That the said Martenet, on the completion and publication of his Map of Maryland, in two editions as proposed in his published description, to be plotted on muslin, six feet by five, and the other in portable Atlas form and plotted on the same scale, shall exhibit the same to the State Superintendent of Public Instruction for his inspection and examination.

Sec. 3. And be it enacted, That it be and is hereby made the duty of said Superintendent of Public Instruction to carefully examine and compare the same with the description of his map, as contained in his published appeal to the Legislature, (a copy of which is hereby directed to be furnished by the Secretary of the Senate to said Superintendent,) and if on said examination and comparison, he, the said Superintendent, shall be satisfied that said map has been com-
2319 pleted and published in manner and style as therein proposed and set forth, he shall furnish said Martenet a certificate to that effect.

Sec. 4. And be it enacted, That on the production of said certificate of Superintendent to the State Librarian, it shall be the duty of said Librarian to receive of said Martenet, one hundred and fifty copies of his large Map of Maryland, on rollers and one

hundred and fifty copies of said Map in Atlas form, (ten copies of each whereof shall not be colored,) to hold the same subject to the provisions hereinafter contained, and to give his receipt as Librarian, to said Martenet for the same.

SEC. 5. And be it enacted, That on the exhibition of the certificate of the State Superintendent of Public Instruction, and the receipt of the State Librarian to the Comptroller of the Treasury, it shall be and is hereby made his, the said Comptroller's duty to issue his warrant to the Treasurer of the State to pay to the said Martenet, or his order, the sum of three thousand dollars.

SEC. 6. And be it enacted, That the said Librarian shall keep carefully and in as good preservation as possible, the ten copies not colored, of each the said Map and Atlas, subject to the orders of any future Legislature, to have them or any of them so marked or colored as to show any changes it may hereafter be thought advisable to have made in the geographical lines or limits of election or other districts, he shall retain two copies of each the Map and Atlas, for the use of the State Library, shall place one copy of each in the Senate Chamber, in the Hall of the House of Delegates, in the Appellate Court Chamber, he shall retain six copies of each for the use of the State, or for such agent or agents as she may empower to use them, and he shall further, with all convenient de-
2320 spatch cause eighty-eight copies of each, the Map on rollers, and the Map in portable Atlas form, to be carefully put up and packed in a manner to avoid injury, and forward the same in manner following: that is to say, three copies of each to the Clerk of the Circuit Court of each county in the State, and to the Clerk of the Circuit Court in the city of Baltimore, with instructions to each of said Clerks in the counties to retain a copy of each of said Map and Atlas in his own office, to place a copy of each in the office of the County Commissioners, in the office of the Register of Wills, to the Clerk of the Circuit Court in Baltimore city, to retain a copy of each, said Map and Atlas, in his own office to place a copy of each in the office of Register of Wills, in the Appeal Tax Court room, and in the office of the Commissioners of Public Schools; and the sum of one hundred dollars, or so much thereof as may be necessary is hereby appropriated to be paid, on the warrant of the Comptroller, to said Librarian to defray the expenses incurred in executing the provisions of this section.

SEC. 7. And be it enacted, That these Maps shall be carefully kept and preserved by the officers in whose charge they may be placed, and shall be subject at all times to be referred to and examined by the citizens of the counties and the city of Baltimore, for whose use and instruction they are especially intended.

SEC. 8. And be it enacted, That the remaining forty copies of each, the Map on rollers, and the Map in Atlas form shall be kept and held by said Librarian, subject to the order of the State Superintendent of Public Instruction, who is requested to make of them such disposition as in his judgment and discretion shall best
2321 promote the cause of education and the enlightenment of the people of the State.

Endorsed: Supreme Court U. S. No. 1 Original, Oct. Term 1907. Maryland *v.* West Virginia, Filed Oct. 15, 1907. Office Supreme Court, U. S. Filed Oct. 15, 1907. James H. McKenney, Clerk.

2322 EXECUTIVE DEPARTMENT, *August 19th,* 1875.

The Governor this day issues a requisition upon the Governor of the State of Maryland for the apprehension and delivery of Augustus Summers, who stands charged by affidavit of O. Johnson Ruse with the crime of Grand Larceny by him committed in the County of Mineral in this State, and has fled from Justice in this State, to the State of Maryland where he now is. The Governor appoints Joseph C. Arnold, of said County of Mineral, Agent in the part of this State to receive the said Augustus Summers from the authorities of the State of Maryland, and him convey to the said County of Mineral there to be dealt with according to law.

By the Governor:

JOHN J. JACOB.

C. HEDRICK,
Secretary of State.

STATE OF WEST VIRGINIA:

Certificate.

I, C. W. Swisher, Secretary of State of the State of West Virginia, do hereby certify that the foregoing is a true and correct copy from the minutes of the Executive Journal *in re* requisition on the Governor of the State of Maryland for the apprehension and delivery of Augustus Summers, who stands charged with the crime of Grand Larceny committed in the County of Mineral, this State, to Joseph C. Arnold, agent on the part of this State, to receive said Augustus Summers and him convey back to Mineral County there to be dealt with according to law.

I further certify that after a careful examination of the
2323 records of this office, I fail to find any other papers relating to the issuing of this requisition.

Given under my hand and the Great Seal of the said State, at the City of Charleston, this Fourteenth day of October, 1907.

[SEAL.] C. W. SWISHER,
Secretary of State.

Endorsed: Supreme Court U. S. No. 1 Original, Oct. Term 1907, Maryland *v.* West Virginia. Filed Oct. 15, 1907.
Office Supreme Court U. S. Filed Oct. 15, 1907. James H. McKenney, Clerk.

2324 EXECUTIVE DEPARTMENT, *3rd September,* 1877.

The Governor this day issues a requisition upon the Governor of the State of Maryland for the apprehension and delivery of William Bartholomew, who stands charged by affidavit of Wm. M. Dawson,

with the crime of horsestealing by him committed in the County of Mineral in this State, and has fled from Justice to the State of Maryland. The Governor appoints D. T. Greenwade agent on the part of the State to receive the said Wm. Bartholomew from the Executive authority of the State of Maryland, and him convey to the said County of Mineral there to be dealt with according to law.

By the Governor:

HENRY M. MATHEWS.

S. BRADY,
Secretary of State.

STATE OF WEST VIRGINIA:

Certificate.

I, C. W. Swisher, Secretary of State of the State of West Virginia, do hereby certify that the foregoing is a true and correct copy from the minutes of the Executive Journal *in re* requisition on the Governor of the State of Maryland for the apprehension and delivery of William Bartholomew, who stands charged with the crime of horse stealing committed in the County of Mineral, this State, to D. T. Greenwade, agent on the part of this State, to receive said William Bartholomew and him convey back to Mineral County there to be dealt with according to law.

I further certify that after a careful examination of the records of this office, I fail to find any other papers relating to the issuing of this requisition.

Given under my hand and the Great Seal of the said State, at the City of Charleston, this Fourteenth day of October, 1907.

C. W. SWISHER,
Secretary of State.

2325 Endorsed: Supreme Court, U. S. No. 1, Original, Oct. Term, 1907. Maryland *v.* West Virginia. Filed Oct. 15, 1907.

Office Supreme Court, U. S. Filed Oct. 15, 1907. James H. McKenney, Clerk.

2326 EXECUTIVE DEPARTMENT, *July 2nd*, 1880.

The Governor this day issues a requisition upon the Governor of Maryland for the apprehension and delivery of M. F. Inskeep, who stands charged by affidavit with the crime of Forgery by him committed in the County of Mineral, this State, and has fled from justice in this State to the State of Maryland. The Governor appoints G. F. Sims, agent on the part of the State, to receive the said Inskeep from the executive authority of the said State of Maryland, and him convey to the said County of Mineral, there to be dealt with according to law.

By the Governor:

HENRY M. MATHEWS.

S. BRADY,
Secretary of State.

STATE OF WEST VIRGINIA:

Certificate.

I, C. W. Swisher, Secretary of State of the State of West Virginia, do hereby certify that the foregoing is a true and correct copy from the minutes of the Executive Journal *in re* requisition on the Governor of the State of Maryland for the apprehension and delivery of M. F. Inskeep, who stand charged with the crime of Forgery committed in the County of Mineral, this State, to F. G. Sims agent on the part of this State, to receive said M. F. Inskeep and him convey back to Mineral County there to be dealt with according to law.

I further certify that after a careful examination of the records of this office, I fail to find any other papers relating to the issuing of this requisition.

Given under my hand and the Great Seal of the said State, at the City of Charleston this Fourteenth day of October, 1907.

[SEAL.] C. W. SWISHER,
Secretary of State.

2327 Endorsed: Supreme Court, U. S. No. 1, Original. Oct. Term, 1907. Maryland *v.* West Virginia. Filed Oct. 15, 1907.

Office Supreme Court, U. S. Filed Oct. 15, 1907. James H. McKenney, Clerk.

2328 EXECUTIVE DEPARTMENT, *December 23rd,* 1881.

The Governor this day issues a requisition upon his Excellency, the Governor of Maryland for the apprehension of William Harris, who stands charged by affidavit with the crime of attempting to kill and murder by him committed in the county of Mineral, in this State, and has fled from Justice to the State of Maryland.

The Governor appoints C. H. Candy, Sheriff of the County of Mineral Agent on the part of this State to receive said William Harris from the Executive authority of the State of Maryland and him convey to the said County of Mineral, there to be dealt with according to law.

By the Governor:

J. B. JACKSON.

RANDOLPH STALNAKER, JR.,
Secretary of State.

STATE OF WEST VIRGINIA:

Certificate.

I, C. W. Swisher, Secretary of State of the State of West Virginia, do hereby certify that the foregoing is a true and correct copy from the minutes of the Executive Journal *in re* requisition on the Governor of the State of Maryland for the apprehension and delivery of William Harris, who stands charged with the crime of attempting

to kill and murder, committed in the County of Mineral, this State, to C. H. Candy, agent on the part of this State, to receive the said William Harris and him convey back to Mineral County there to be dealt with according to law.

I further certify that after a careful examination of the records of this office, I fail to find any other rpapers relating to the issuing of this requisition.

Given under my hand and the Great Seal of the said State, at the City of Charleston, this Fourteenth day of October, 1907.

[SEAL.] C. W. SWISHER,
Secretary of State.

2329 Endorsed: Supreme Court, U. S. No. 1, Original, Oct. Term, 1907. Maryland *v.* West Virginia. Filed Oct. 15, 1907.

Office, Supreme Court, U. S. Filed Oct. 15, 1907. James M. McKenney, Clerk.

2330 STATE OF MARYLAND,
Alleghany County, To wit:

I hereby certify that on the Ninth day of September, 1872, personally appeared before me, the subscriber, a Justice of the Peace of the said State, in and for said Allegany County, Charlotte Dayton and made oath on the Holy Evangely of Almighty God, that on the 24th day of August, 1872, a certain William Craig (colored) with *fa*-ce and arms at Allegany County aforesaid, violently and feloniously did make an assault on her, the said Charlotte Dayton then and there, *fa*-ibly and against her will, feloniously did ravish and carnally know. And the aforesaid affiant further swears that she does not take this oath for the purpose of collecting any debt, but only and exclusively for the purpose of public justice; and further that the said Wiliam Craig before his arrest could be made, did flee and escape from the said State, and into Mineral County, West Virginia, where he now is. And I further certify that the party making said foregoing affidavit is entitled to full credit; and that the facts sworn to, in my opinion, authorize the issue of a Requisition.

Witness my hand on the *say* and year aforesaid.

URIAH DUCKWORTH, *J. P.* [SEAL.]

STATE OF MARYLAND,
Alleghany County, set:

I hereby certify that Uriah Duckworth, Esq., before whom the aforegoing affidavit appear to have been made, and who has subscribed the same, was, at the date thereof, one of the Justices of the Peace of the State, in and for said county, duly elected, commissioned and sworn, and that his signature thereto is genuine.

In testimony Whereof, I have hereunto subscribed my name and affixed the seal of the Circuit Court for Alleghany County, this 12" day of September, 1872.

[SEAL.] HORACE RESLEY,
Clerk Circuit Court for Alleghany County, Maryland.

2331 STATE OF MARYLAND:

William Pinkney Whyte, Governor of the State of Maryland, to His Excellency, the Governor of West Virginia:

It appears by the annexed papers, duly authenticated according to the laws of this State, that William Craig (Colored) stands charged with having commit-ed a rape upon a certain Charlotte Dayton of Alleghany County, and it has been represented to me that he has fled from the justice of this State, and has taken refuge within the State of West Virginia.

Now therefore, pursuant to the provisions of the Constitution and Laws of the United States, in such case made and provided, I do hereby request that the said William Craig be apprehended and delivered to Richard L. Gross, Sheriff of Allegany County who is hereby duly authorized to receive and convey him to the State of Maryland, there to be dealt with according to law.

In witness whereof, I have hereunto affixed my name and the Great Seal of the State, this Twenty-third day of September, in the year of our Lord One thousand eight hundred and seventy-two.

By the Governor:

WM. PINKNEY WHYTE.

[SEAL.] JNO. THOMSON MASON,
Secretary of State.

EXECUTIVE DEPARTMENT, *October* 4, 1872.

The Governor this day received a Requisition from His Excellency the Governor of Maryland, for the delivery of William Craig (colored), who stands charged by an affidavit (annexed to said requisition), with the crime of Rape, by him committed in the County of Alleghany, in the State of Maryland; and it appearing that he is a fugitive from justice, and he is now represented to be in the county of Mineral, in this State;

The Governor therefore issues this warrant directed to the Sheriff of Mineral County, commanding him to apprehend and deliver the said William Craig, to Richard L. Gross the Agent Appointed
2332 by the Governor of the State of Maryland to receive him.

By the Governor:

JOHN J. JACOB.

JOHN M. PHELPS,
Secretary of State.

STATE OF WEST VIRGINIA:

Certificate.

I, C. W. Swisher, Secretary of State of the State of West Virginia, do hereby certify that the foregoing annexed papers are true and correct copies of the Requisition issued by the Governor of the State of Maryland on the Governor of the State of West Virginia *in re* William Craig (Colored), and also a copy from the minutes of the Executive Journal setting forth the fact that this requisition had

DARK PAGE BL

been duly honored by the Governor of this State and a warrant issued to the Sheriff of Mineral County, commanding him to apprehend and deliver the said William Craig to the Agent appointed by the Governor of the State of Maryland.

Given under my hand and the Great Seal of the said State, at the City of Charleston, this Fourteenth day of October, 1907.

[SEAL.] C. W. SWISHER,
Secretary of State.

Endorsed: Supreme Court, U. S. No. 1, Original, Oct. Term, 1907. Maryland *v.* West Virginia. Filed Oct. 15, 1907.

Office Supreme Court, U. S. Filed Oct. 15, 1907. James H. McKenney, Clerk.

2333 At a County Court for Mineral County, West Virginia, held at the Court House thereof on the 16th. day of June, 1893, the following order was entered:

The petition of H. Clay Shaw and 351 other citizens of Mineral County asking for the erection of an Iron Bridge over the North Branch of the Potomac between Piedmont, W. Va., and Luke Md. was presented to the Court for consideration, the Court is of opinion that the erection of said bridge will be of great convenience to the traveling public. And the authorities of Allegany Co., Md., having agreed that they will pay one half of the expenses of erecting said bridge. It is ordered that said bridge shall be erected and the commissioners of this Court doth resolve themselves into a committee of the whole to act in co-operation with the Commissioners of Allegany County, Md., in carrying out said order and the Clerk of this Court is directed to notify the commissioners of Allegany County to that effect.

And now on another day to-wit: At a County Court for Mineral County, West Virginia, held at the Court House thereof, on the 27th. day of July, 1894, the following order was entered:

In the Matter of the Erection of the Bridge Over the Potomac Between Luke Md., and the Piedmont, W. Va.

The Commissioners of the County Court of Mineral County report that they met the Commissioners on behalf of Allegany County, Md., in Piedmont on the 10th day of July, 1894. That the joint committee had fully discussed the matter and examined the ground and location of said bridge. The joint committee appointed a committee consisting of P. S. Minshall & D. L. Luke of Piedmont and Lloyd Durst of Lonaconing to let and superintend the construction of said bridge. The action of said Commissioners in joint session is hereby ratified and confirmed.

And now on another day to-wit: At a County Court for Mineral County, West Virginia, held at the Court House thereof on the 28th. day of August, 1894, the following order was entered:

BLEED THRU

2334 The Court having resolved itself into a committee to meet and confer with the board of Commissioners of Allegany Co. in reference to the proposed bridge over the N. B. of the Potomac between Luke, Md., & Piedmont, W. Va., reported that they have met the Commissioners of Allegany Co. at Piedmont on the 9th. day of August, 1894, for the purpose of opening the bids for the proposed work that the Youngstown Bridge Company being the lowest bidder was awarded the contract at the price of $7301, including the super & substructure.

The action of said joint committee is ratified and *and* confirmed and the joint committee consisting of Messrs. Minshall, Luke & Durst is continued to superintend the construction of the same with authority to make such changes in the plans this day submitted by the engineer as they deem proper.

STATE OF WEST VIRGINIA,
Mineral County, to wit:

I, J. V. Bell, Clerk of the County Court for the county aforesaid, do hereby certify that the foregoing is a true copy of the orders made by the County Court of Mineral County, West Va., for the erection of an Iron Bridge over the North Branch of the Potomac River between Piedmont W. Va. and Luke Allegany Co. Md., as the same appears of record in my office.

In Testimony whereof I have hereunto set my hand and affixed the seat of the County Court at the Court House thereof this the 25th day of July, 1906.

[SEAL.]

J. V. BELL,
Clerk County Court.

Endorsed: Supreme Court, U. S. No. 1, Original, Oct. Term, 1907. Maryland *v.* West Virginia. Filed October 15, 1907.

Office Supreme Court, U. S. Filed Oct. 15, 1907. James H. McKenney, Clerk.

2335 1 Hening's Statutes at Large, Pages 358 to 361.

Att a Grand Assembly Held at James City the 10th day of October, 1649.

From a MS. received from Edmund Randolph, Esq. which was once the property of Sir John Randolph, who transmitted it to his son Peyton Randolph, Esq. after whose death, it was purchased, with his library, by Thomas Jefferson, Esq. from whom it was borrowed by Edmund Randolph, Esq.

Act. 1.

Whereas divers out of ignorance, others out of malice, schisme and faction, in pursuance of some designe of innovation, may be presumed to prepare mens' minds and inclinations to entertaine a good likeing of their contrivement, by casting blemishes of dis-

honour upon the late most excellent and now undoubtedly sainted king, and to those close ends vindicating & attesting the late proceedings against the said blessed King (though by so much as they may seeme to have colour of law, and forme of justice, they may be truly and really said to have the more and greater height of impudence.) And upon this foundation of asserting the cleerness and legality of the said unparalel'd treasons, perpetrated on the said king, doe build hopes and inferrences to the high dishonour of the regall estate, and in truth to the utter disinherision of his sacred Majesty that now is, and the divesting him of those rights, which the law of nature and nations and the knowne lawes of the Kingdom of England have adjudged inherent to his royall line, and the law of God himselfe (if sacred writ may be soe stiled which this age doth loudly call in question) hath consecrated unto him. And as arguments easily and naturally deduced from the aforesaid
2336 cursed and destructive principles, with much endeavour, they press and perswade the power of the comission to be void & null, and all magistracy and office thereon depending to have lost their vigor and efficacy, but such means assuredly expecting advantages for the accomplishment of their lawless and tyrranous intentions,

Be it therefore declared and enacted and it is hereby enacted by Governor, Council and Burgesses, of this Grand Assembly, and the authority of the same, That what person soever, whether stranger or inhabitant of this collony, after the date of this act, by reasoning, discourse or argument shall go about to defend or maintain the late traterous proceedings against the aforesaid King of most happy memory, under any notion of law and justice, such person using reasoning, discourse or argument, or ordering any words or speeches to such purpose or effect, and being proved by competent witnes, shall be adjudged an accessory *post factum*, to the death of the aforesaid King, and shall be proceeded against for the same, according to the knowne lawes of England: or whoever shall go about by irreverent or scandalous words or language to blast the memory and honour of that late most pious King, (deserving ever altars and monuments in the hearts of all good men), shall, upon conviction, suffer such censure and punishment as shall be thought fitt by the Governour and Council. And be it further enacted, That what person soever shall by words or speeches indeavour to insinuate any doubt, scruple or question of or concerning the undoubted & inherent right of his Majesty that now is to the collony of Virginia, and all other his majesties dominions and countryes as King and Supream Governour, such words and speeches shall be adjudged high treason: And it is also enacted, That what person soever, by false reports and malicious rumors shall spread abroad, among the people, anything tending to change of government, or to the lessening of the power and authority of the Governor or government
2337 either in civill or ecclesiasticall causes (which this Assembly hath and doth declare to be full and plenarie to all intents and purposes) such persons not onely the authors of such reports and rumors, but the reporters and divulgers thereof, (unless it be

done by way of legall information before a magistrate) shall be adjudged equally guilty and shall suffer such punishment even to severity as shall be thought fitt, according to the nature and quality of the offence.

Endorsed: Supreme Court, U. S. No. 1, Original, Oct. Term, 1907. Maryland *v.* West Virginia. Filed Oct. 15, 1907.
Office, Supreme Court, U. S. Filed Oct. 15, 1907. James H. McKenney, Clerk.

2338 1 Hening's Statutes at Large, Pages 363, 364, and 365.

Articles at the Surrender of the Countrie.

Articles agreed on and concluded at James Cittie in Virginia for the surrendering and settling of that plantation under the obedience and government of the Common Wealth of England, by the commissioners of the Councill of State, by authoritie of the Parliament of England and by the Grand Assembly of the Governour, Councill and Burgesses of that countrey.

First. It is agreed and cons'ted that the plantation of Virginia, and all the inhabitants thereof, shall be and remaine in due obedience and subjection to the common wealth of England, according to the lawes there established. And that this submission and subscription bee acknowledged a voluntary act not forced nor constrained by a conquest upon the countrey. And that they shall have and enjoy such freedomes and privileges as belong to the free borne people of England, and that the former government by the comissions and instructions be void and null.

2dly. Secondly, that the Grand Assembly as formerly shall convene and transact the affairs of Virginia, wherein nothing is to be acted or done contrarie to the government of the commonwealth of England and the lawes there established.

3dly. That there shall be a full and totall remission and indempnitie of all acts, words or writeings done or spoken against the parliament of England in relation to the same.

4thly. That Virginia shall have and enjoy the antient bounds and lymitts granted by the charters of the former Kings. And that we shall seek a new charter from the parliament to that purpose against any that have intrencht upon the rights thereof.

2339 5thly. That all the pattents of land granted under the collony seale, by any of the precedent Governours shall be and remaine in their full force and strength.

6thly. That the privilege of haveing fliftie acres of land for every person transported in the collony shall continue as formerly granted.

7thly. That the people of Virginia have free trade as the people of England do enjoy to all places and with all nations according to the lawes of that commonwealth. And that Virginia shall enjoy all privileges equall with any English plantations in America.

8thly. That Virginia shall be free from all taxes customes and impositions whatsoever, and none to be imposed on them without

consent of the Grand Assembly. And soe that neither ffortes nor castles bee erected or garrisons maintained without their consent.

9thly. That noe charge shall be required from this country in respect of this present ffleet.

10thly. That for the future settlement of the countrey in their due obedience, the engagement shall be tendred to all the inhabitants according to act of parliament made to that purpose, that all persons who shall refuse to subscribe the said engagement, shall have a yeares time if they please to remove themselves, and their estates out of Virginia, and in the mean time during the said yeare to have equal justice as formerly.

11thly. That the use of the book of common prayer shall be permitted for one yeare ensueinge with referrence to the consent of the major part of the parishes, Provided that those things which relate to kingshipp or that government be not used publicquely; and the continuance of ministers in their places, they not misdemeaning themselves: And the payment of their accustomed dues and agreements made with them respectively shall be left as they now stand dureing this ensueing yeare.

2340 12thly. That no man's cattell shall be questioned as the companies unles such as have been entrusted with them or have disposed of them without order.

13thly. That all ammunition, powder and arms, other then for private use shall be delivered up, securitie being given to make satisfaction for it.

14thly. That all goods allreadie brought hither by the Dutch or others which are now on shoar shall be free from surprizall.

15thly. That the quittrents granted unto us by the late Kinge for seaven yeares bee confirmed.

16thly. That the commissioners for the parliament subscribing these articles engage themselves and the honour of the parliament for the full performance thereof: And that the present Governour and the Councill and the Burgesses do likewise subscribe and engage the whole collony on their parts.

RICH: BENNETT, [SEALE.]
WM. CLAIRBORNE, [SEALE.]
EDMOND CURTIS, [SEALE.]

Theise articles were signed and sealed by the commissioners of the Councill of State for the Common Wealth of England, the twelveth day of March, 1651.

Endorsed: Supreme Court, U. S. No. 1, Original. Oct. Term, 1907. Maryland *v.* West Virginia. Filed Oct. 15, 1907. Office Supreme Court, U. S. Filed Oct. 15, 1907. James H. McKenney, Clerk.

2341 1 Hening's Statutes at Large, Page 365.

Articles for the surrendering Virginia to the subjection of the Parliament of the Common wealth of England, agreed uppon by the honourable the Commisioners for the Parliament and the hon'ble, the Governour and Councill of State.

First. That neither Governour nor councill shall be obliged to take any oath or engagement to the Common-Wealth of England, for one whole yeare. And that neither Governour nor Councill be censured for praying for or speaking well of the King for one whole yeare in ther private houses or neighbouring conference.

2dly. That there be one sent home at the present Governour's choice to give an accompt to his Ma'tie of the surrender of his countrey, the present Governour bearing his charges, that is Sr. William Berkley.

3dly. That the present Governour, that is Sr. William Berkeley and the Councill shall have leave to sell and dispose of their estates, and to transporte themselves whether they please.

4thly. That the Governour and Councill though they take not the engagement for one whole yeare shall yet have equall and free justice in all courts of Virginia untill the expiration of one whole yeare.

5thly. That all the Governour's and Councill's land and houses, and whatsoever belongeth to them bee perticularly secured and provided for in these articles.

6thly. That all debts of the Governour's by act of Assembly, and all debts due to officers made by the Assembly bee perfectly made good to them. And that the Governour be paid out of the goods remaining in the countrey of the Dutch ship that went away cleer for Holland without paying his customs.

7thly. That the Governour may have free leave to hire a shipp for England or Holland to carrie away the Governour's goods,
2342 and the Councill's, and what he or they have to transporte for Holland or England without any lett or any molestation of any of the State's shipps att sea or in their rivers or elsewhere by any of the shipps in the common wealth of England whatsoever.

8thly. That the Capt of the fforte be allowed satisfaction for the building of his house in fforte Island.

9thly. That all persons that are now in this collonie of what quality or condition soever that have served the King here or in England shall be free from all dangers, punishment or mulkt whatsoever, here or elsewhere, and this art'e, as all other articles bee in as cleer termes as the learned in the law of arms can express.

10thly. That the same instant that the commissions are resigned an act of indempnitie and oblivion be issued out under the hands and seales of the commissioners for the parliament, and that noe persons in any courte of justice in Virginia be questioned for their opinions given in any causes determined by them.

11thly. That the Governor and Councill shall have their passes to go away from hence in anie shipps in any time within a year;

And in case they goe for London or other place in England that they or anie of them shall bee free from anie trouble or hindrance of arrests or such like in England, and that they may follow their occasions for the space of six monthes after their arrivall.

RICH: BENNETT, [SEALE.]
WM. CLAIBORNE, [SEALE.]
EDMOND CURTIS. [SEALE.]

Theise articles were signed, sealed, sworne unto by us the commissioners for the parliament of the common wealth of England, the 12th of March, 1651.

Endorsed: Supreme Court, U. S. No. 1 Original, Oct. Term, 1907. Maryland *v.* West Virginia. Filed Oct. 15, 1907. Office Supreme Court, U. S. Filed Oct. 15, 1907. James H. McKenney, Clerk.

2343 *Acts of West Virginia,* 1881.

CHAPTER L.

A Bill to change the name of "the Potomac and Piedmont coal and railroad company," and to confer additional powers thereon.

(Passed February 23, 1881.)

Be it enacted by the Legislature of West Virginia;

1. That an act passed February twenty-sixth, one thousand eight hundred and sixty-six, entitled "an act to incorporate the Potomac and Piedmont coal and railroad company", be amended and re-enacted so as to read as follows:

1. That the name of said, the Potomac and Piedmont coal and railroad company" be, and the same is hereby changed to that of the "West Virginia Central and Pittsburg railroad company," and by that name shall have succession, and have power to sue and to be sued in any court whatever, and may have and use a common seal, and the same alter and renew at pleasure, and shall have all the powers, rights and franchises necessary and proper for the carrying on the mining of coal, the building of manufactories, saw mills or furnaces, the burning of brick, the manufacturing of lumber, and the buying and disposing of the same, together with the right to buy and sell real estate, and for the transportation of coal and other products of its mines, and property to market, and shall have power and authority to make and pass such by-laws, rules and regulations for the management and government of the affairs of said corporation and its officers, directors and agents, as may be deemed necessary or proper, which may also be amended changed or repealed at any and all regular meetings of the stockholders of said company; Provided, however, That such by-laws shall not be repugnant to any law of this state or the United States. * * *

6. That the said company be and the same is hereby invested with all and singular, the rights, power and authority nec-
2344 essary to enable it to locate, construct and maintain such railroad, or railroads, as the directors may deem necessary for the convenient transaction of its business, from any point on the line of the Baltimore and Ohio railroad, along the waters of the North Branch of the Potomac River, or any of its tributaries; and also along the waters of the Cheat, the Tygart's Valley and Greenbrier rivers, to any lands or mines owned by said company in the counties of Mineral, Grant, Tucker, Randolph, Pocahontas and Greenbrier, with the privileges, power and authority of extending it to the town of Piedmont, in the county of Mineral; and also with the privilege, power and authority of locating, building and extending, maintaining and operating its road along the waters of Tygart's Valley river, from its head-waters to the Monongahela river, and down the Monongahela river to the south boundary of Pennsylvania; or along the head-waters of the Cheat river, and down the same to the south boundary of the state of Pennsylvania, or both, if such company should see fit; and also with the privilege of making a connection with the Chesapeake and Ohio railway company, and the Washington and Ohio railroad company, the Richmond and Allegheny railroad company, or any other railroad company, or companies, with the power and authority to build, construct and equip such lateral road, or roads, as may be deemed necessary for the purposes of this act, and with the power and authority to charge and collect tolls on passengers and freight; and for these purposes, and also for the purposes of construction, the said company shall be and is hereby invested with all and singular, the rights, powers, immunities, franchises and privileges for the surveying, locating and constructing of such railroad, or railroads, and for the working, repairing, preserving and controlling the same, and the necessary vehicles and appurtenances thereunto belonging, and every part thereof, granted to railroads by the general railroad laws of this state, as if the same were hereby expressly enacted. But this Act shall
2345 not be construed so as to grant said Company immunity from taxation.

Endorsed: Supreme Court, U. S. No. 1, Original. Oct. Term, 1907. Maryland *v.* West Virginia. Filed Oct. 15, 1907.
Office Supreme Court, U. S. Filed Oct. 15, 1907. James H. McKenney, Clerk.

2346 Charters and Constitutions, Pages 1992 and 1993.

Act for the Admission of West Virginia—1862.

(Thirty-seventh Congress, Second Session.)

An Act for the Admission of the State of West Virginia Into the Union, and for Other Purposes.

Whereas the people inhabiting that portion of Virginia known as West Virginia did, by a convention assembled in the city of Wheeling, on the twenty-sixth of November, eighteen hundred and sixty-one, frame for themselves a constitution, with a view of becoming a separate and independent State; and whereas at a general election held in the counties composing the territory aforesaid, on the third day of May last, the said constitution was approved and adopted by the qualified voters of the proposed State; and whereas the legislature of Virginia, by an act passed on the thirteenth day of May, eighteen hundred and sixty-two, did give its consent to the formation of a new State within the jurisdiction of the said State of Virginia, to be known by the name of West Virginia, and to embrace the following named counties, to wit: Hancock, Brooke, Ohio, Marshall, Wetzel, Marion, Monongalia, Preston, Taylor, Tyler, Pleasants, Ritchie Doddridge, Harrison, Wood, Jackson, Wirt, Roane, Calhoun, Gilmer, Barbour, Tucker, Lewis, Braxton Upshur Randolph, Mason, Putnam, Kanawha, Clay, Nicholas, Cabell, Wayne, Boone, Logan, Wyoming, Mercer, McDowell Webster Pocahontas Fayette, Raleigh, Greenbrier, Monroe, Pendleton, Hardy, Hampshire and Morgan; and whereas both the convention and the legislature aforesaid have requested that the new State should be admitted into the Union, and the constitution aforesaid being republican in form, Congress doth hereby consent that the said forty-eight counties may be formed into a separate and independent State; Therefore,

Be it enacted by the Senate and House of Representatives
2347 of the United States of America in Congress assembled, That the State of West Virginia, be, and is hereby, declared to be one of the United States of America, and admitted to the Union on an equal footing with the original States in all respects whatever, and until the next general census shall be entitled to three members in the house of Representatives of the United States: Provided always, That this act shall not take effect until after the proclamation of the President of the United States hereinafter provided for.

It being represented to Congress that since the convention of the twenty-sixth of November, eighteen hundred and sixty-one, that framed and proposed the constitution for the said State of West Virginia, the people thereof have expressed a wish to change the seventh section of the eleventh article of said constitution by striking out the same and inserting the following in its place, viz: "The children of slaves born within the limits of this State after the fourth day of July, eighteen hundred and sixty-three, shall be free;

and that all slaves within the said State who shall, at the time aforesaid, be under the age of ten years, shall be free when they arrive at the age of twenty-one years; and all slaves over ten and under twenty-one years shall be free when they arrive at the age of twenty-five years; and no slave shall be permitted to come into the State for permanent residence therein"; Therefore,

SEC. 2. Be it further enacted, That whenever the people of West Virginia shall, through their said convention, and by a vote to be taken at an election to be held within the limits of the said State, at such time as the convention may provide, make, and ratify the change aforesaid, and properly certify the same under the hand of the president of the convention, it shall be lawful for the President of the United States to issue his proclamation stating the fact, and thereupon this act shall take effect and be in force from and
2348 after sixty days from the date of said proclamation.

Approved, December 31, 1862.

Endorsed: Supreme Court, U. S. No. 1, Original. Oct. Term, 1907. Maryland *v.* West Virginia. Filed Oct. 15, 1907.
Office Supreme Court, U. S. Filed Oct. 15, 1907. James H. McKenney, Clerk.

2349 Charters and Constitutions, Part 2, Page 1993.

Transfer of Territory to West Virginia.

(Thirty-ninth Congress, First Session.)

Joint Resolution Giving the Consent of Congress to the Transfer of the Counties of Berkeley and Jefferson to the State of West Virginia.

Be it resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That Congress hereby recognizes the transfer of the counties of Berkeley and Jefferson from the State of Virginia to West Virginia, and consents thereto.

Approved, March 10, 1866.

Endorsed: Supreme Court, U. S. No. 1, Original, Oct. Term, 1907. Maryland *v.* West Virginia. Filed Oct. 15, 1907.
Office, Supreme Court, U. S. Filed Oct. 15, 1907. James H. McKenney, Clerk.

2350 In the Supreme Court of the United States. In Equity.

STATE OF MARYLAND
vs.
STATE OF WEST VIRGINIA.

To the Honorable the Supreme Court of the United States:

I, Julius K. Monroe, one of the Surveyors in the above entitled cause, selected by the State of West Virginia under a stipulation filed in said cause, and an order entered therein, beg leave to make the following report:

Pursuant to such stipulation and the order aforesaid, the party, consisting of Mr. John Harned, the Surveyor selected by the State of Maryland, and Mr. S. Johnson Poe, Attorney at law representing the State of Maryland, and myself, met in Kingwood on Tuesday October 2nd. 1894, and on the following morning October 3rd. 1894, we left Kingwood in wagons via Terra Alta for the "Fairfax Stone," at which point we were directed by the Attorney for the State of West Virginia to begin said survey. At Terra Alta, we were joined by Mr. George E. Price, Assistant Counsel for the State of West Virginia. We reached the residence of Mr. George Mosser, in Garrett County, Maryland, about two miles Northeast of the "Fairfax Stone," on the evening of October 3rd. 1894. On the morning of October 4th, we proceeded to the "Fairfax Stone" and entered upon the work of the survey.

The party being organized, as follows: Surveyors, John Harned and Julius K. Monroe; Chainmen, George E. McGee and Homer Ravenscraft; Flagman, William W. Monroe; Axmen, Louis Lantz and J. S. Watson; Commissary, Camden Lantz; Attorney for the State of Maryland, S. Johnson Poe; Attorney for the State of West Virginia, George E. Price.

Mr. George Mosser conducted us to the "Fairfax Stone" and pointed it out to us. The present monument, known as the "Fairfax Stone," which was pointed out to us by Mr. Mosser, is located near three springs, which by actual survey are located with reference to the monument, as follows:

2351 N. 64 Degrees 59 Minutes W. 30 feet, S. 18 Degrees 50 Minutes East 34 feet, S. 46 Degrees 13 Minutes E. 55 feet, respectively.

The present monument consists of two base stones, together forming a square about two feet wide by one foot high, very rough and uneven, which is surmounted by one stone cut into pyramidal shape, the cap of which is gone. The size of this stone would indicate that another layer of stone was originally placed between this and the base stone, which would have made the monument probably five feet high. It is now about 3½ feet. Mr. Mosser stated that this was the monument placed by Lieut. Michler in 1859 or 1860, and was placed directly South of, and against, the original "Fairfax Stone," which is now entirely gone.

We were instructed by the Attorney for the State of West Virginia to locate and retrace upon the ground, as far as possible, both the line run by Lieut. Michler in 1859 and also the old Maryland line known as the "Old State Line" between Maryland and West Virginia, and sometimes spoken of as the "Deakins Line." The "Deakins Line," he understood, had been run in 1789 by Francis Deakins, just prior to, or at the time he laid out what are known as the "Military Lots" West of Ft. Cumberland, as bounty lands for the Revolutionary soldiers for the State of Maryland. We assumed that the magnetic variation of the needle between 1789 and 1894 would be about 3 Degrees 40 minutes West, and we thereupon undertook to run a reference line North with a variation of 3 Degrees 40 Minutes. We were also instructed, by Attorney for the State of West Virginia, to note and locate upon the ground the property lines along, and adjacent to the lines aforesaid, both as held at present and also as originally granted by the State of Virginia, and in some cases, also to locate and run out grants made by the State of Maryland.

Pursuant to these instructions, we began the survey at the "Fairfax Stone" and ran a magnetic line from that point North
2352 (Variation 3 Degrees 40 Minutes) to Mason and Dixon's line, the Southern boundary line of the State of Pennsylvania, and took the following notes along said line:

At 242 poles, center of the North branch of the Potomac River flowing East;

At 250 poles strike hemlock and birch marked as center line trees on North and South sides;

At 314.08 poles passed 6/10 pole West of a planted stone, marked "B" "1101," with a much decayed trunk of a maple tree lying from said stone. This point is believed to be the beginning corner of Military Lot No. 1101, as laid out by Francis Deakins in 1789, and also the point at which the "first mile tree" of said Deakins line extending North from the "Fairfax Stone," stood.

The description of said Military Lot No. 1101, as reported by Francis Deakins, begins at a bounded maple marked "1101" standing one mile North from the stone fixed by Lord Fairfax, for the head of the North branch of the Potomac River;

At 320 poles planted first mile stake;

At 362 poles summit of Arnold's Hill;

At 365.88 poles cross Ridge road;

At 500 poles set reference stake and adjourned until following morning.

October 5th, 1894.

Began at the end of 500 poles above mentioned.

At 515 poles passed 1.88 poles West of a very large hemlock, anciently marked as line tree on the North and South sides thereof.

At 530.8 poles cross branch of Laurel Run flowing East;

At 547 poles cross another branch of Laurel Run flowing East;

At 561 poles cross third branch of Laurel Run flowing East;

At 640 poles set two mile stake on Southeast slope of Backbone Mountain;

At 744 poles passed 4/10 pole West of large hemlock, with ancient line marks on the North and South sides thereof;

At 820 poles set reference stake and adjourned for the day.

2353 October 6th, 1894.

Began at the end of 820 poles above mentioned and continued.

At 909.35 poles passed 12.7 poles East of the monument on the Summit of Backbone Mountain, pointed out to us and believed to be the first monument North of the "Fairfax Stone" planted on the line ran by Lieut. Michler in 1859;

At 919.4 poles crest of Backbone Mountain;

At 960 poles set three mile stake on the Northwest slope of Backbone Mountain and adjourned survey until October 12th, 1894.

October 12th, 1894.

On October 12th, party assembled at Oakland, Maryland, and drove from there to George Mosser's, reaching his place at 5:30 P. M.

October 13th, 1894.

Began at the end of 960 poles, where we left off on October 16th, and continued.

At 1107.2 poles passed 1.4 poles West of a large chestnut oak marked as a corner tree with stone pile and pointers near, subsequently located by actual survey as the Northeast corner of a 600 acre tract of land granted by the Commonwealth of Virginia to Wilson, Byrne, and Morris, by Patent dated February 1st, 1854, a copy of which Patent is filed with the answer of the State of West Virginia in this cause as "Exhibit N Patent No. 14." This point is designated on Map No. 1, accompanying this report by the figures "1107.2" and by red letter and figure "A4";

At 1160 poles set reference stake and adjourned for the night.

October 15th, 1894.

Began at the end of 1160 poles above mentioned.

At 1189.8 poles passed 2.1 poles West of a hemlock, marked as line tree on North and South sides;

At 1192 poles cross branch of the Youghiogheny River flowing West;

At 1201.6 poles passed 1.65 poles West of dead hemlock,
2354 center line marked on North and South sides;

At 1217 poles second branch of the Youghiogheny River flowing Westward;

At 1221 poles third branch of the Youghiogheny River flowing West;

At 1261.6 poles passed 2/10 poles West of a large chestnut, marked as a side line;

At 1280 poles set 4 mile stake on Western slope of a hill;
At 1284.6 poles passed 85/100 poles West of a stake and pointers believed to be the point where the "4 mile tree" stood on said Deakins line. This point is designated on Map No. 1 by the figures "1284.6" and by red letter and figure "B";
At 1364 poles cross branch of Youghiogheny River flowing North 60 degrees W.
At 1488 poles set reference stake and adjourned for night.

October 16th, 1894.

Began at the end of 1488 poles above mentioned and continued.
At 1540 poles cross County road;
At 1600 poles set "5 mile stake" in Bitner's field;
At 1764 poles set reference stake. We then went to a planted stone at the end of the second line of the Daniel Gnegy tract, and ran by his papers the following lines of his property: No. 72 Degrees W. 188 poles to a planted stone said to be in the Maryland line, thence North 89.6 poles to a stone, and white oak, at the road, Gnegy's beginning corner, and pointed out by him as the beginning corner of a tract of land patented in Maryland under the name of "Mt. Pleasant." Adjourned for the day.

October 17th, 1894.

Began at the end of 1764 poles above mentioned and continued.
At 1802 poles cross road leading to Dobbin;
At 1809 poles stake on South side of Horse Shoe Run;
2355 from which point we ran S. 32 Degrees W. 49.2 poles to said stone and white oak, shown as the beginning corner of "Mt. Pleasant," and also the beginning corner of Gnegy's land. This point is designated on Map No. 1 by red letter and figure "B2," then returned to the end of 1809 poles and continued main line.
At 1900 poles passed 25.6 poles East of a line fence running North and South between the lands of John Slaughbaugh on the West (part of the Pettijohn's survey of 350 acres granted by the Commonwealth of Virginia), and Obed Shaffer on the East.
At 1920 poles set "6 mile stake;
At 2240 poles set "7 mile stake" on the South side of the Eglon and Oakland road;
At 2242 poles center said road;
At 2560 poles set "8 mile stake" in Alder swamp and adjourned for the day.

October 18th, 1894.

Began at the end of 2560 poles above mentioned and continued main line.
At 2600 poles cross Youghiogheny River flowing Northwest;
At 2635.8 poles set reference stake in Dick's field from which I ran the following reference line, N. 82 Degrees W. 22.32 poles to a point in the Youghiogheny River at the mouth of the run flowing in from the West pointed out by Lloyd Dawson, as a corner between

his land and the land of D. E. Offutt, and as being on the "Old State Line." This point is designated on Map No. 1 by red letter and figure "C2," returned to reference stake at 2635.8 poles and continued main line;

At 2697 poles center of Northwest Turnpike;

At 2714 poles passed 25 poles East of a planted stone on the North edge of said Turnpike, which was pointed out as a corner of the Dick land in Maryland, and in a line of the D. E. Offutt tract, and as being on the "Old State Line." This point is designated
2356 on Map No. 1 by red letter and figure "C13";

At 2720.85 poles passed 35.25 poles East of "monument No. 2" standing on the Michler line and designated on Map No. 1 by the words "Monument No. 2";

At 2746.8 poles center of Aurora and Oakland road;

At 2780 poles set "9 mile stake on Martin's Hill;

At 29.67 poles cross County road;

At 3040 poles set "9½ mile stake," adjourned for the day.

October 19th, 1894.

Began at the end of 9½ miles and continued main line.

At 3130.15 poles passed 39.93 poles East of a chestnut stake on Stahl's Hill pointed out to us as the original stake set in Michler's line in 1859;

At 3200 poles set "10 mile stake."

At 3278.7 poles passed 24.1 poles East of a bounded sugar tree pointed out by Peter F. Nine, as the end of the second line of a tract of land called "Eelshine," and as standing in the "Old State Line." This point is designated on Map No. 1 by red letter and figure "C3";

At 3337 poles cross County road;

At 3419 poles cross Youghiogheny River flowing East;

At 3520 poles set "11 mile stake" in a hollow in Ashby's field and adjourned for the day

October 20th, 1894.

Went to a point on the Youghiogheny River pointed out and believed to be the place where the original cherry tree stood, corner of Wm. Ashby's 300 acre tract patented by the Commonwealth of Virginia. Thence with first line of same N. 61 Degrees W. (Variation 3 Degrees 40 Minutes) 72.8 poles to a reference stake, thence S. 59 Degrees 50 Minutes W. 26.6 poles to the 11 mile stake above mentioned. Returning to reference stake at 72.8 poles, we extended this line N. 61 Degrees W. 95 poles in all to a stake pointed out and believed to be at the end of the 4th. line of a tract of land called "Maryland," patented by the State of Maryland to John Hoye
2357 January 23rd, 1823. We then went to a Pine stump on the West bank of the Youghiogheny River pointed out by John R. Bowman as the South corner of the Wm. Ashby 300 acre tract, and ran with the lines of the same as follows: N. 48 Degrees E. 45½ poles to a stake; East 83 poles to a cherry and pine on the West bank of the Youghiogheny River claimed to be a corner of the

Wm. Ashby's 50 acre tract in a line of the 300 acre tract; continuing East, at 172 poles passed 1.6 poles North of a bounded sugar heretofore referred to as the corner of the tract called "Eelshine"; at 196.1 poles cross our main line at end 3280.3 poles from "Fairfax Stone";

At 203.85 poles passed 2/10 pole North of a stake with Pine pointers claimed by said Bowman as his corner; at 210.5 poles set stake among several bounded Pines believed to be the corner of "Buckdale" and Military Lot No. 318, now owned by Peter F. Nine, and a corner of the Wm. Ashby 50 acre tract; all of the above bearings run with a Variation of 3 Degrees 40 Minutes, and adjourned for the day.

October 22nd, 1894.

Began at the end of 11 miles on our main line, where we left off October 19th, and continue.

At 3750.8 poles set reference stake from which point we ran S. 79 Degrees E. 4.35 poles to a stake and stone pile a corner of Kunkle land, now Preston Lumber & Coal Company and supposed to stand on the "Old Maryland Line" and to be a common corner of this tract. The tract called "Maryland," and "Military Lot" No. 342." From the same reference stake, I also ran S. 75 Degrees W. 6.6 poles to a large chestnut stump, a corner of Kunkle (now Preston Lumber and Coal Company) land and the Wm. Ashby 200 acre tract, and which is the same point indicated on the Map made by W. McCulloh Brown, Surveyor in this cause by the letter "Q," and which point is designated on Map No. 1 by red letter and
2358 figure "C1."

At 3840 poles set "12 mile stake,"

At 3920 poles set reference stake N. 79½ Degrees E. 8.3 poles from the Northeast corner of Miller's House;

At 4126 poles set reference stake and adj-urned for the day.

October 24th, 1894.

Began at the end of 4126 poles on main line and continue.

At 4158.6 poles cross Preston Lumber & Coal Company Railroad;

At 4160 poles set "13 Mile stake";

At 4480 poles set "14 mile stake";

At 4649.7 poles set reference stake from which point I ran N. 61 Degrees E. 10.75 poles to a stone pile, corner of Garrett White and Fredlock tract, and claimed to be in the "Old State Line." This point is designated on Map No. 1 by red letter and figure "D1." Returned to reference stake at 4649.7 poles and continued;

At 4700 poles set reference stake and adjourned for the day.

October 25th, 1894.

Went to stake at the end of 14½ miles in our main line and ran the following reference lines:—South 21.3 poles; S. 88½ Degrees W. 27.2 poles to the Southeast corner of the Fredlock house. This point is designated on Map No. 1 by the word "Fredlock" and a

square dot. Returned to stake at the end of 4700 poles in main line and continued;

At 4764 poles set reference stake from which point I ran N. 61½ Degrees W. 25.48 poles to the Southeast corner of Garrett White's residence. This point is designated on Map No. 1 by "G. White" and a square dot;

At 4800 poles set "15 mile stake in Garrett White's field;

At 4865 poles cross Snowy Glade Creek flowing East;

At 4875.5 poles cross division fence between said White, and Wesley DeBerry, a short distance West of their corner, formerly a cherry tree;

At 4889.3 poles set reference stake from which point I ran N. 54 Degrees 47 Minutes W. (V. 3 Degrees 40 Minutes) 70.9 poles
2359 to a stone monument on the South side of the B. & O. Railroad, which was pointed out as standing on the Michler line;

At 4911.4 poles set reference stake and from which point I ran S. 87 Degrees E. 3.75 poles to the Southeast corner of Samuel Freeland's house. This house is designated on Map No. 1 by the word "Freeland" and a square dot, and from the same reference stake N. 53 Degrees 45 Minutes W. 12.28 poles to the Northeast corner of E. W. Felton's house, which house is designated on Map No. 1 by the word "Felton" and a square dot;

At 4919.24 poles cross B. & O. Railroad;

At 4939 poles set reference stake from which point I ran S. 81½ Degrees W. 17 poles to the Southeast corner of Isaac H. Smith's house, which house is designated on Map No. 1 by the word "Smith" and a square dot.

At 4947.2 poles set reference stake from which point I ran S. 74¼ Degrees E. 6.4 poles to the corner of Connell's board fence. This point is designated on Map No. 1 by red letter and figure "D6";

At 5021.4 poles cross line fence between Gates & Sharpe and Wm. H. DeBerry 7.6 poles West of a stone in Connell's line marked "W. D." This stone is designated on Map No. 1 by red letter and figure "D4."

At 5096 poles cross County road leading from Terra Alta to Oakland;

At — Poles passed — Poles East of Wm. H. DeBerry's house, which house is designated on Map No. 1 by the word "DeBerry" and a square dot;

At 5120 poles set "16 mile stake";

At 5204.7 poles set reference stake and adjourned for the day.

October 26th, 1894.

Returned to "14 mile stake" on our main line, from which point I ran the following reference lines:—South 43.8 poles; S. 57 Degrees E. 12.85 poles to a stake and pointers, claimed by John Con-
2360 nell as his corner in the "Old Maryland Line."

This point is designated on Map No. 1 by red letter and figure "D½," thence S. 1¾ Degrees E. 8.7 poles to a stone pile claimed by Samuel B. Crane as his corner in the "Old Maryland

Line." Returned to end of 5204.7 poles on main line, from which point I ran the following reference line:

N. 85 Degrees E. 7.95 poles to a planted stone, corner of Dennis Glover and Wm. H. DeBerry, and claimed to stand in the "Old Maryland Line." This stone is designated on Map No. 1 by red letter and figure "D5."

At 5440 poles set "17 mile stake";

At 5470 poles set reference stake from which point I ran S. 52¾ Degrees E. 8.8 poles to a stone pile in a glade, appeared to be very old, and believed to be the point where the original Service and Thorne stood which are called for in the patent of 500 acres granted by the Commonwealth of Virginia to John Bacorn dated May 18th, 1793, which point is designated on Map No. 1 by red letter and figure "D3";

At 5488.8 poles set reference stake from which point I ran S. 88¾ Degrees E. 7.3 poles to a white oak, claimed to be the South corner of "Military Lot 1237" in Maryland, and a corner to the 6000 acre Deakins survey in Virginia, and now owned in part of U. N. Orr.

This white oak is designated on Map No. 1 by red letter and figure "D9";

At 5676 poles set reference stake from which point I ran S. 73 Degrees 35 minutes E. 6.88 poles to a stake and stone pile, claimed as a corner of "Military Lots No. 1237 and 1238" in Maryland and by Major U. N. Orr to be in the Old State Line. This point is designated on Map No. 1 by red letter and figure "D7";

At 5701.4 poles set reference stake from which point I ran N. 76 degrees E. 6.85 poles to a very old red oak, line tree, marked on the North and South sides.

This point is designated on Map No. 1 by red letter and figure —;

2361 At 5754 poles set reference stake from which point I ran S. 72 Degrees E. 6.24 poles to a stake and stone pile, corner of Military Lots No. 1238 and 1239 in Maryland, and in U. N. Orr's East line. This point is designated on Map No. 1 by red letter and figure "D8";

At 5854 poles set reference stake from which point I ran N. 71¾ Degrees E. 5.1 poles to a white oak anciently marked on the East side with the letter "H," and also marked as a side line on the East side. This point is designated on Map No. 1 by red letter and figures "D" 11". This point is referred to and designated as aforesaid for the reason that a white oak marked "H" is mentioned as standing on the original boundary line between the States of Maryland and Virginia, in a deed from Samuel Normand, Jas. T. Ward's executors and Ulysses Ward to U. N. Orr, dated April 28th, 1877, a copy of which is filed with the depositions of U. N. Orr in this cause, marked "Exhibit No. 24";

At 5840 poles set reference stake and adjourned for the day.

October 29th, 1894.

Began at the end of 6840 poles in our main line and continued. At 5976 poles set reference stake and adjourned for the day.

October 30th, 1894.

Began at the end of 5976 poles on our main line and continued.

At 6116 poles set reference stake on the South side of the old Burchinal road from which point I ran the following reference line: N. 80 Degrees E. 5.3 poles to a large chestnut stump on the South side of said road believed to be the stump of the chestnut tree mentioned as standing on the South side of said road and on the Maryland line, in a deed from John Hoye to Jacob Crane, dated August 10th, 1846, and recorded in the County Clerk's Office of Preston County, West Virginia, in Book No. 7, page 288, the original
2362 of which was shown to me by A. J. Elliott, and a copy of which is filed herewith as a part of this cause marked "Elliott Exhibit No. 1," which point is designated on Map No. 1 by red letter and figures "D16";

At 6380 poles set reference stake on top of Snaggy Mountain and adjourned for the day.

October 31st, 1894.

Began at the end of 6380 poles in our main line and continued.

At 6395.85 poles passed 71 poles East of the Stone Monument on the Michler Line on the Summit of Snaggy Mountain;

At 6622.5 poles set reference stake from which point I ran S. 66 Degrees E. 5.28 poles to a red oak, line tree marked on the North and South sides;

At 6761.4 poles set reference stake and adjourned for the day.

November 1st, 1894.

Began at the end of 6888 poles in our main line and continued.

At 7040 poles set "22 mile stake" in Pine Swamp;

At 7172 poles set reference stake and adjourned for the day.

November 2nd, 1894.

Began at the end of 7172 poles and continued.

At 7236.75 poles cross Rinard and Elsey's Run, thence 2.15 poles West of a stake pointed out as standing in the "Old State Line";

At 7300 poles cross Cranesville and Oakland road;

At 7330 poles strike main Pine Swamp.

At 7360 poles set "23 mile stake";

At 7540 poles set reference stake and adjourned for the day.

November 3rd, 1894.

Began at the end of 7540 poles and continued.

At 7606 poles set reference stake in Pine Swamp and adjourned survey until November 13th.

2363 November 13th, 1894.

Began at the end of 7606 poles and continued our main line.
At 7680 poles set "24 mile stake" in Pine Swamp;
At 7830 poles set reference stake and adjourned for the day.

November 14th, 1894.

Began at the end of 7830 poles and continued our main line.
At 7848.6 poles entered cleared land at the North end of Pine Swamp;
At 7901.4 poles set reference stake from which point I ran N. 71¾ degrees E. 36.8 poles to a planted stone in Michael Feather's field, represented as the beginning corner of the tract of land patented in Maryland called the "Diadem" where two bounded wild cherry trees are called for in the original patent. This point is designated on Map No. 1 by red letter and figure "F3", and is also designated on the Map of W. McCulloch Brown, Surveyor in this cause, by letter "E" continuing from this stone, I ran S. 26½ Degrees E. 50.65 poles; S. 18 Degrees 05 minutes E. 21.7 poles; South 80.35 poles to a stake, the Southwest corner of Military No. 1402 in Maryland now owned by Israel Frankhouser's heirs. This point is shown on Map No. 1 by the location of said Lots No. 1402 and 1400. Returned to reference stake at 7901.4 poles and continued main line.
At 7916.6 poles cross Cranesville and Sang Run road;
At 8000 poles set "25 mile stake" on Michael Feather's land;
At 8198 poles cross Salt Block Run flowing East;
At 8240 poles passed Geo. Falkenstein's barn and house, which are designated on Map No. 1 by two square dots near the figures "8230";
At 8256.6 poles cross division fence between Ethbel Falkenstein's and Notley Browning, where we strike the Henry Banks 8000 acre survey;
At 8260 poles set reference stake in Browning's field from which point I ran the following reference lines: S. 87 degrees 05
2364 Minutes E. 24½ poles; N. 83 Degrees E. at 45.1 poles on this line passed 35/100 pole South of a planted stone claimed to be a corner of Henry Bank's 8000 acre survey, and to stand in the Old Maryland Line (This point is designated on Map No. 1 by red letter and figure "F4");
At 72.8 poles in all to a stone pile shown by Notley Browning as a corner to Military Lot No. 1463. Adjourned for the day.

November 15th, 1894.

Began at the end of 8260 poles in our main line and continued.
At 8290 poles County road from Cranesville to Hazleton;
At 8313.5 poles recross County road leading from Cranesville to Hazleton;
At 8320 poles set "26 mile stake";
At 8372 poles summit Fike's Hill;

At 8444.75 poles passed 81.15 poles East of the Michler Monument on Fike's Hill, said Monument being designated on Map No. 1 by the words "Fike's Hill Monument";

At 8726 poles set reference stake and adjourned for the day.

November 16th, 1894.

Went to a chestnut tree, the Northeast corner of Jos. C. Feather's 280 acre tract near Cranesville, which point is designated on Map No. 1 by red letter and figure "F2", and ran from this point with his line East (V 2 Degrees 21 Minutes) 163.8 poles to a stake in said line, and a corner to Wesley Feather. Adjourned for the day.

No work November 17th, 18th, and 19th, 1894.

November 20th, 1894.

Returned to stake corner of Wesley Feather where we left off November 16th, and ran with Wesley Feather, N. 5 degrees W. (V. 2 Degrees 21 Minutes) 63.7 poles to a stake, thence through the
2365 lands of Michael Feather, N. 78 degrees 20 Minutes E. 53.6 poles; N. 72 Degrees 10 Minutes E. at 40 poles on this line passed 3 poles South of Michael Feather's house 88.15 poles in all to reference stake 7901.4 poles in our main line, and adjourned for the day.

November 21st, 1894.

Went to white oak stump standing on the North side of the Burchinal road on the East side of white oak spring run, pointed out as the beginning corner of John Rodeheaver's survey of 297 acres, which point is designated on Map No. 1 by red letter and figures "D20," from which point I ran S. 78½ Degrees E. 246.35 poles to the Michler Monument on Snaggy Mountain, and adjourned for the day.

November 22nd, 1894.

Returned to the end of 8726 poles on our main line, where we left off November 15th and continued.

At 8762.5 poles cross white rock run flowing East;

At 8945 poles cross division fence between Notley Browning and John Reckart;

At 8960 poles set "28 mile stake" in Reckart's field;

At 9097.4 poles cross lane, division line between John A. Reckart and Polk Synes;

At 9280 poles set "29 mile stake" West of Sisler's improvement. Sisler's house is indicated on Map No. 1, by the word "Sisler" and a square dot.

Set stake also at about 20 poles East of Preston Savage's house, which is indicated on Map No. 1 by "P Savage" and a square dot.

At 9303.6 poles cross Laurel Run;

At 9322 poles set reference stake and adjourned for the day.

November 23rd, 1894.

Began at the end of 9322 poles in our main line and continued.

At 9325.1 poles cross Savage's fence into his field;

At 9392 poles set reference stake about 13 poles Southwest of Ezra and Albert Savage's houses. Said houses are indicated on
2366 Map No. 1 by the words "Savage" and two square dots;

At 9413 poles cross Buffalo Run flowing Northeast;

At 9488.8 poles set reference stake, from which point I ran N. 56½ Degrees W. 29.95 poles to a large black gum and white oak stump, claimed to be the beginning corner of a tract of land called Elder Spring patented in Maryland in 1774. This point is indicated on Map No. 1 by red letter and figures "G13", also on map of W. McCulloch Brown, Surveyor in this cause, by red letter "F";

At 9515 poles passed 25 poles East of Samuel Falkner's house;

At 9528 poles passed 3 poles East of Preston Welch's new house, which points are designated on Map No. 1 by the names "Samuel Falkner" and "Preston Welch" and two square dots;

At 9530 poles set reference stake and adjourned for the day.

November 24th, 1894.

Began at the end of 9530 poles in main line and continued.

At 9536 poles cross Buffalo Run flowing Northeast;

At 9600 poles set "30 mile stake" about 3 poles East of Buffalo Run;

At 9612.7 poles cross Bitner's bridge on Buffalo Run, two feet East of center;

At 9816 poles cross division line between Marshall and Melvy Friend;

At 9860 poles passed about 40 rods West of Marshall Friend's house, which house is designated on Map No. 1 by the square dot following the name "Marshall Friend";

At 9902.45 poles set reference stake from which point I ran, S. 71 Degrees 40 minutes W. 16.27 poles to a point, claimed as the end of the third line of the Elder Spring, and also a corner of Henry Deal's survey of 367 acres now Amanda Hull and Marshall Friend, which point is designated on Map No. 1 by red letter and figure "G3";

2367 Returned to reference stake 9902.05 poles and continued.

At 9920 poles set "31 mile stake" in Marshall Friend's woods, about 25 poles East of Amanda Hull's house, which house is designated on Map No. 1 by the name "Amanda Hull" and a square dot;

At 9987.5 poles set reference stake, from which point I ran, N. 82¾ Degrees W. 2.6 poles to a red oak, corner of Henry Deal's survey of 367 acres, also a corner of Marshal Friend and George Teets, which point is designated on Map No. 1, by red letter and figure "G4";

Returned to reference stake 9987.5 poles on our main line and continued;

At 10096.5 poles cross division line fence between Geo. Teets and Joshua and Sylvanus Fike;

At 10160 poles passed about 35 east poles of Jos. Fike's House, This house is designated on Map No. 1 by a square dot under the name "Joshua Fike";

At 10240 poles set "32 mile stake";

At 10254.5 poles cross run flowing east;

At 10290 poles set reference stake and adjourned for the day.

November 26th, 1894.

Began at the end of 10290 poles on our main line and continued.

At 10414 poles cross County road leading Friendsville;

At 10466.6 poles cross line fence between Geo. D. Evans and Joseph Guthrie;

At 10469.9 poles set reference stake, from which point I ran, S. 71 Degrees 10 minutes E. 96.9 poles to a point in a lane in the division line between Geo. D. Evans and —— Thomas, near Alex Thomas' house, which point is claimed to be in the "Old State Line", and is designated on Map No. 1 by red letter and figure "H3", also from above reference stake, I ran, N. 58 Degrees 40 minutes E. 30 poles to a chestnut snag, corner of Guthrie and Evans which
2368 point is indicated on Map No. 1 by red letter and figure "H1" returned to 10468.9 poles in our main line, and continued:

At 10560 poles set "33 mile stake" in Guthrie's woods about 80 poles West of Wm. Fear's house, which house is indicated on Map No. 1 by square dot under the figures "50¼";

At 10589.8 poles cross line fence between C. T. Vansickle and Wm. Fear;

At 10829.9 poles set reference stake, from which point I ran, S. 73¼ Degrees E. 41.25 poles; S. 72 Degrees E. 51.6 poles to a Spanish oak, corner to David and Lewis Vansickle's tracts, recognized as a common corner of Lewis and David Vansickle's surveys, and as the Spanish oak called for in the original patent, as standing on, or near, the Maryland Line. This point is indicated on Map No. 1 by red letter and figure "H4," continuing N. 32 Degrees E. 44 poles; N. 45 Degrees 50 Minutes E 21.9 poles to a large white oak, pointed out by Marshall Fike, as a common corner to Military Lots No-. 2997 and 2998, which point is marked "W. O." on Map No. 1, return to reference stake 10829.9 poles and continue in main line;

At 10852 poles passed 4 poles East of C. T. Vansickle's barn;

At 10864 poles passed 6 poles West of C. T. Vansickle's house. This house and barn are indicated on Map No. 1 by two square dots above the name "Geo. W. Vansickle;

At 10880 poles set "34 mile stake";

At 10942 poles passed 10 poles East of J. A. Fike's house.

This house is indicated on Map No. 1 by a square dot below the names "Wm. & J. A. Fike";

At 10997.8 poles cross line fence between Lewis Vansickle (now Fike) and Umble;

At 11070 poles set reference stake and adjourned for the day.

2369 November 22nd, 1894.

Began at reference stake 11070 poles in our main line and continued;

At 11077.3 poles cross Friendsville road;

At 11200 poles set "35 mile stake" in Anthony's woods;

At 11386 poles passed 6 poles West of David Lewis's house, now occupied by David Vansickle. This house is indicated on Map No. 1 by the name "D. Lewis" and a square dot.

At 11520 poles set "36 mile stake" in the Abraham Thomas field;

At 11541.75 poles set reference stake in, or near, the Mason and Dixon's Line. This point is indicated on Map No. 1 at the intersection of this reference line and the Mason and Dixon's line, and is 25.6 poles East of the Northwest corner of the A. Thomas tract, as shown by him, and 87.2 poles East from Michler Monument at the Mud Pike. The last named point is indicated on Map No. 1 by the words "Michler Monument." The above reference stake stands 151.68 poles West of a stone monument pointed out as the monument set up in 1885, by Joint Commissioners to establish the boundary line between West Virginia and Pennsylvania.

This Monument is a hewn stone about 15 inches square, and 4½ feet high, hewn to a flat pyramidal shape on top, standing on a stone sub-bass on what appears to be a noted mound, elevated perhaps 18 inches, and has the following inscriptions:

	"PA.
On the North side,	1885
	55.2 M."
On the West side,	"Pa. | W. Va.
On the South side,	"W. Va. | Md."
On the East side,	"Md. | Pa."

2370 Having now completed the running of the reference line from the "Fairfax Stone" to the Pennsylvania line, we adjourned the survey for the present.

No further surveying was done until the 21st day of October, 1896. On that day I started with the following party to Marshall Friend's; Willis Fortney and H. M. Ravenscraft, Chainmen; Hoy Jackson, Flagman. Arrived at A. S. Chidesters, where we lodged for the night.

October 22nd, 1896.

Arrived at Marshall Friend's at 10:30 A. M. The following surveying was done after notice to counsel and surveyor selected by the State of Maryland, but they did not think it necessary to be in attendance. Went to stake marked "31 miles" in our main line, as run in 1894, and ran the following reference lines: S. 17.4 poles to stake; S. 40 Degrees E. 48.6 poles to stake; S. 55 Degrees 50 Minutes E. 86.1 poles, large Chestnut, corner Marshall Friend. This point is indicated on the Map by red letter and figure "G5."

At 88.4 poles to stake in Melvy Friend's field; thence N. 83¾ Degrees E. 11.5 poles to a dead White Oak, claimed to be in line of

Lot No. 2985, owned by Wm. H. Friend, and with his line, N. 3 Degrees 45 Minutes E.

At 58 poles E. 5.9 poles to a point claimed as the Northwest corner of said lot;

At 139.3 poles, N. 77¼ Degrees W. 14.4 poles to a White Oak claimed by Marshall Friend as his corner and a corner of Henry Deahl's survey of 367 acres. This point is indicated on Map No. 1 by red letter and figure "G8";

At 227½ poles, S. 87 degrees E. 16.2 poles to a point shown as corner of Lots 2989 and 2952, and said to be owned by Isaac Myers. Adjourned for the day.

October 23rd, 1896.

Began at 34 mile stake set in the reference line run in 1894, from which point I ran the following reference line: E. 117.15 poles to a stake; S. 38 Degrees 15 Minutes E. 25.8 poles to a large
2371 White Oak, corner Lots 2997 and 2998, as pointed out by Marshall Fike, heretofore referred to, thence from this point S. 281.4 poles to a stone pile pointed out by Marshall Fike as in the "Granary" line. Returned to the white oak, corner Lots 2997 and 2998 and ran the following reference line, N. 50 poles, set reference stake and adjourned for the day.

October 24th, 1896.

Began at end of 50 poles where we left off on October 23rd and continued. At 104.85 poles passed 1.45 poles W. of a stone pile believed to be corner of Military Lots 2997 and 2996;

At 265.1 poles crossed line fence between Frank Fike and McDermott, as pointed out by Fike;

At 366.5 poles crossed line fence between McDermott and Levi Fike;

At 466.4 poles cross line fence between Levi Fike and Umble; from this point I ran West 44.45 poles to a corner of Levi Fike and Umble in David Lewis's line; this corner is claimed to stand on the State line, and is indicated on Map No. 1 by red letter and figure "H6";

At 539.5 poles cross Taylor Umble's North line; Cross Pennsylvania line between 685 and 686 poles;

At 686 poles set reference stake North of Mason and Dixon Line, from which point I ran as follows: S. 84½ Degrees E. 18.65 poles; S. 1½ Degrees W. 1.15 poles to the monument standing in the Pennsylvania line heretofore described as having been set by the boundary Commission between the States of Pennsylvania and West Virginia in 1885.

Having no instructions to do any further surveying, work was suspended for the present.

August 2nd, 1897.

By previous arrangement, I went to Oakland, Maryland, and there joined the surveying party under charge of W. McCulloh
2372 Brown, who had been substituted as surveyor by the State of Maryland instead of John Harned, who had accompanied me

on the former survey. Said surveying party consisted of the following: Edward H. Sincell, Assistant Counsel for the State of Maryland; W. McCulloh Brown, Engineer in charge of survey; Dr. L. A. Bauer; R. T. Browning, Edmond Jamison; James A. Sincell; Wm. Shartzer; Chain Bearers; Messrs. Rodeheaver, Wolfe, Abernathy, Kitzmiller and Wilson, Choppers; Wm. Brown, J. A. L. Burrell and Charles Ashby, Flagmen; Henry Clark, colored cook. Party left Oakland with camping outfit and utensils, for Fairfax Stone between 10 A. M. and 2:30 P. M., consisting of two passenger teams and two baggage teams. Arriving at camp ground on Arnold's Hill about 1¾ miles Northeast of Fairfax Stone, late in the evening, tents were pitched, consisting of two sleeping, a dining and a cooking tent;

August 3rd, 1897.

Party proceeded to Fairfax Stone. The stone was found in the same condition in which we had left it in 1894.

Choppers were put to work cleaning out the line North so that Mr. L. A. Bauer could make the necessary astronomical observations for his work.

August 4th, 1897.

Mr. Bauer arrived and immediately made preparations to take astronomical observations.

August 5th, 1897.

W. McCulloh Brown set approximate points in the meridian in order to ascertain the line to the North branch of the Potomac and then to run the branches of the same to their sources.

August 6th, 1897.

Mr. Brown finished the running of the approximate lines to the North Branch of the Potomac and set a reference point on the South bank of the North Branch, which is marked by zero "0" 2373 on said Brown's Map in this cause.

August 7th, 1897.

A line was surveyed up the South bank of the North branch to a point which is marked "Station 31" on the Map of the said W. McCulloh Brown in this cause. From this point, ("Sta. 31") the two forks of the River were surveyed by Mr. Brown in the manner fully described in this report and testimony heretofore taken in this cause. This surveying, together with various other lines and astronomical observations, cutting timber, etc., occupied the party until August 25th. following.

I do not deem it necessary to give the particulars of this running, nor of the astronomical observations, which were in the meantime being carried on by Dr. Bauer, for the reason that they are fully set forth and described in the reports by Mr. Brown and Dr. Bauer in this cause, as well as in the testimony of Mr. Brown heretofore

taken. It is proper, however, to state that in running the North branch of the River Mr. Brown ran the line on the left hand bank of the stream going up, which was on the outside of the curve as shown on the map. And in running the South fork of the River he ran on the left-hand side going up, which was on the inside of the curve. After he had completed his survey of said streams in the manner indicated I surveyed said streams in the following manner.

August 26th, 1897.

Upon my request of Mr. Brown, he directed the following members of the party to assist in the survey: R. T. Browning, J. A. Sincell and J. L. A. Burrell; Mr. Sincell and Mr. Burrell measured as follows: Beginning at "Station 31" as indicated on W. McCulloh Brown's map, we measured up the North prong in the center of the bed of the stream as the water flows at ordinary stages; 6419 feet in all to a stake marked "97" placed by Mr. Brown in his survey as the head or source of this stream; this stream as measured
2374 by Mr. Brown as 6477.7 feet from "Station 31." On the following day, August 27th, the same party returned to "Station 31," at the main forks of the stream, and measured the South branch leading to Fairfax Stone in the same manner, which we found to be 6730 feet to the point where the original Fairfax Stone stood, and 6744 feet to the first or left-hand spring, going up, which seems to be the stronger of the three. The length of this fork as run by Mr. Brown from Station 31 to the Fairfax Stone was 6418.8 feet as stated in his testimony taken in this cause. A stone was planted at the head spring of the North prong of the River by Mr. Brown, and also one on the summit of Backbone Mountain, 520 feet North of said spring, planting and location of which springs are fully described by Mr. Brown in his report and testimony. The approximate meridian line which Mr. Brown started from Fairfax Stone as hereinbefore stated, was continued by him to the top of the Backbone Mountain. He afterward ran certain lines with a view to the location of the tracts patented by the State of Maryland called "Covent Garden, and "Maryland" and "Royal Charlotte." But I do not deem it necessary to give a detailed account of these surveys, I presume it has been reported on by Mr. Brown as far as necessary.

Afterward the party went to the stone planted by Mr. Brown at the head of the North Fork of the North branch of the Potomac and from that point Mr. Brown ran a meridian line to the Pennsylvania line, passing through various Stations which had been located by Dr. Bauer by astronomical observation along said line. I accompanied the party while surveying this line, and as a detailed report of it is made by Mr. Brown, I do not deem it necessary to go into details here. It may be proper to say, however, that there were no indications of any corner or marked lines or other monuments indicating any anciently marked line along where this line was run, nor in its neighborhood. The party was engaged in running this line up until the — day of —— 1897.

2375 In the beginning of the running of said line, I took as careful account as I could of the property lines as held by

the people living and owning lands along said line, and these property lines and holdings are shown on Map No. 1 filed with this report. During the running of the meridian line from the head of the North fork of the North branch of the Potomac, Mr. Brown ran certain lines with a view to the location of the tracts patented by the State of Maryland called "Elder Spring" "Granary" and "Cherry Hill," and after said line was completed he went to the head of the North branch of the Potomac and took the levels of the Fairfax Stone, and the stone planted by him at the head of the North fork, and several other points, all of which work is fully described in his report in this cause.

He also afterward ran certain lines for the purpose of ascertaining the location of the tract of land called "Diadem," patented by the State of Maryland, and also did certain surveying upon the lines of the Deakins 6000 acre survey shown on Map, with a view to locating a tract of land called "Ashby's Cove," and also did certain surveying for the purpose of locating a tract of land containing 138 acres lying East of all the meridian lines which have been run in this cause, and which was patented by the Commonwealth of Virginia to Wm. Deakins, August 21, 1787. So far as deemed necessary he has reported all this surveying and I have no further observation to make about it. Mr. Brown also ran certain lines and located a spring in the town of Cranesville inside of the lines of the "Diadem," which is indicated on his Map by the letters "W. J." and the word "Spring," and is indicated on Map No. 1 filed with this report by the word "Spring" and a small dot. This surveying and running of various other lines by Mr. Brown occupied the party most of the time, with some interruptions, until March 5, 1898, when the work was suspended.

2376 August 22, 1899.

By previous arrangement and by direction of counsel for the State of West Virginia, I left Kingwood with the following named party: D. Y. Beavers and Daniel Dawson, chain bearers, and went to Thomas, in Tucker County, West Virginia, where we were joined by George E. Price, counsel for the State of West Virginia; Edward Price, Richard Price and W. McCulloh Brown, survey- for Maryland, and Moses Leister, Axman.

On August 23rd. went to Fairfax Stone, and from there ran South (V. 3 Degrees 10′) 209.8 poles in all to a stake on the bank of a stream flowing Southwest into the waters of Cheat River.

We then ran out and measured by actual survey the courses of several branches running Southwest and being waters of the Cheat River. The location and courses of said streams are accurately laid down on Map No. 1 according to the survey of them made as aforesaid. These are the streams shown on the map as running South, and rise South and West of the Fairfax Stone, and of the dividing ridge between the waters of Cheat and Potomac Rivers near Fairfax Stone, as shown on the map. We then located by actual survey the various branches running into the Potomac River rising East and Southeast from the Fairfax Stone. These streams are all accurately

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located on Map No. 1. We also noted points on these various streams where they are crossed by the W. Va. Central and Pittsburg Railroad, and we have from these points laid down said railroad on the map with approximate correctness. This work occupied the surveying party up to September 25th. 1899. Meantime, however, I made a detailed survey of the Potomac River in the neighborhood of the fork where the two branches come together, one leading to Fairfax Stone and the other to the stone planted by Mr. Brown near the Backbone Mountain.

(A detailed report of the courses and distances of the various streams is filed herewith, marked, "Maryland *vs.* West Virginia. Supplemental report of Julius K. Monroe, Engineer for the
2377 State of West Virginia. Field notes of survey of small streams in the vicinity of Fairfax Stone.")

Beginning at a point which is marked by zero, and corresponding substantially with "Station 31" on Map of Mr. Brown, I ran the following lines up the South branch leading to the Fairfax Stone: S. 80 Degrees 10′ W. 89.4 feet; S. 58 Degrees 47′ W. 134.2 feet; S. 75 Degrees 18′ W. 76.4 feet, in all 300 feet. Whilst measuring said line, at each 10 feet of the distance we mea-ured to the right and left banks of said streams as follows:

At 10 feet, 5 feet to the left bank, 11 feet to right to the right bank; at 20 feet 9 feet to left to left bank and 9 feet to right to right bank; at 30 feet 8 feet to left to left bank and 8 feet to right to right bank; at 40 feet 7 feet to left to left bank and 8½ feet to right to right bank; at 50 feet 3 feet to left to left bank 9½ feet to right to right bank; at 60 feet 0 to left to left bank; 11½ feet to right to right bank; at 70 feet, 2 feet to right to left bank, 12 feet to right to right bank; at 80 feet 3 feet to right to left bank, 15 feet to right to right bank; at 90 feet 2 feet to right to left bank, 15 feet to right to right bank; at 100 feet 0 feet to left bank 12 feet to right to right bank; at 110 feet 5 feet to left to left bank; 11 feet to right to right bank; at 120 feet 10 feet to left to left bank, 10½ feet to right to right bank; at 130 feet 10 feet to left to left bank, 11 feet to right to right bank; at 140 feet 7 feet to left to left bank, 13 feet to right to right bank; at 150 feet 5 feet to left to left bank; 5½ feet to right to right bank; at 160 feet 13 feet to left to left bank, 3 feet to right to right bank; at 170 feet 13 feet to left to left bank 4½ feet to right to right bank; at 180 feet 9 feet to left to left bank, 6½ feet to right to right bank; at 190 feet 8 feet to left to left bank, 12 feet to right to right bank; at 200 feet 7 feet to left to left bank, 15 feet to right to right bank; at 210 feet 0 to
2378 left to left bank, 22½ feet to right to right bank; at 220 feet 2 feet to right to left bank, 23 feet to right to right bank; at 230 feet 2½ feet to right to left bank, 23½ feet to right to right bank; at 240 feet 0 to left bank, 23 feet to right to right bank; at 250 feet 0 to left bank, 22 feet to right to right bank; at 260 feet 0 to right to left bank, 27 feet to right to right bank; at 270 feet 2 feet to right to left bank, 17 feet to right to right bank; at 280 feet 2 feet to right to left bank, 16 feet to right to right bank; at 290 feet

0 to left to left bank; 13 feet to right to right bank; at 300 feet 4 feet to left to left bank, 15 feet to right to right bank.

I then returned to Station "O," at forks, and ran the following lines up the West branch leading to the stone planted by Mr. Brown: N. 34 Degrees 42′ W. 80.3 feet; N. 6 Degrees 46′ W. 64.7 feet; N. 73 Degrees 29′ W. 95 feet; S. 29 Degrees 8′ W. 47.5; N. 63 Degrees 37′ W. 12.5 feet, making 300 feet in all. Measured width of stream at each 10 feet on this line as follows. At 10 feet in center of strea-; at 20 feet 6 feet to the left to left bank, 8 feet to the right to the right bank; at 30 feet 6 feet to the left, left bank, 5 feet to the right, right bank; at 40 feet 5 feet to the left, left bank, 5 feet to the right, right bank; at 50 feet 4½ feet to the left, left bank, 7½ feet to the right, right bank; at 60 feet 1 foot to the left, left bank, 10 feet to the right, right bank; at 70 feet 1 foot to the right to the left bank, 13 feet to the right, right bank; at 80 feet 3 feet to the right, left bank, 15 feet to the right to the right bank; at 90 feet 1 foot to the left, left bank, 15 feet to the right, right bank; at 100 feet 2 feet to the left, left bank, 7 feet to the right, right bank; at 110 feet 4 feet to the left, left bank, 9 feet to the right, right bank; at 120 feet 1 foot to the left, left bank, 14½ feet to the right, right bank; at 130 feet 1 foot to the right, left bank 17½ feet to the right,
2379 right bank; at 140 feet 3 feet to the right left bank, 15½ feet to the right, right bank; at 150 feet 5 feet to the right, left bank, 20 feet to the right, right bank; at 160 feet, 7 feet to the right left bank, 22 feet to the right, right bank; at 170 feet 2 feet to the right, left bank, 21 feet to the right, right bank; at 180 feet 0 to the right, left bank, 17 feet to the right, right bank; at 200 feet 3 feet to the right, left, 18 feet to the right, right bank; at 210 feet 3 feet to the right, left bank, 16 feet to the right, right bank; at 220 feet 5 feet to the right, left bank, 16 feet to the right, right bank; at 230 feet 3 feet to the right, left bank, 16 feet to the right, right bank; at 240 feet 2 feet to the right, left bank, 13 feet to the right, right bank; at 250 feet 3 feet to the right, left bank, 15 feet to the right, right bank; at 260 feet 2½ feet to the right, left bank, 20 feet to the right, right bank; at 270 feet, 5 feet to the left, left bank, 20 feet to the right, right bank; at 280 feet 4 feet to the left, left bank, 23 feet to the right, right bank; at 290 feet 4 feet to the right, left bank — feet to the right, right bank; at 300 feet, 2 feet to the right, left bank, 18 feet to the right, right bank.

I then returned to the Station O at the forks and ran down the main stream as follows: N. 80 Degrees 2′ E. 98.2 Feet; S. 54 Degrees 23′ E. 109.4; N. 74 Degrees 29′ E. 92.4 feet, in all 300 feet, and took the following measurements at each 10 feet: At 10 feet 6½ feet to the left, South bank, 29 feet to the left, north bank; at 20 feet, 10 feet to the left to South bank, 29 feet to the left, North bank; at 30 feet 10 feet to the left, South bank, 30½ feet to the left, North bank; at 40 feet 9 feet to the left, South bank, 29 feet to the left North bank; at 50 feet 7 feet to the left, South bank, 29 feet to the left, North bank; at 60 feet, 6 feet to the left South bank, 27

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feet to the left North bank; at 70 feet 6 feet to the left South
2380 bank, 26 feet to the left North bank; at 80 feet 7 feet to the left South bank, 24 feet to the left North bank; at 90 feet 4 feet to the left South bank, 19 feet to the left, North bank; at 100 feet 0 to the left to South bank, 19 feet the left North bank; at 110 feet 6 feet to the left, South bank, 24 feet to the left North *abnk;* at 120 feet 8 feet to the Left, South bank, 28 feet to the left North bank; at 130 feet 12 feet to the left, South bank, 31 feet to the left, North bank; at 140 feet 14 feet to the left South bank, 32 feet to the left, North bank; at 150 feet 13 feet to the left South bank, 32 feet to the left North bank; at 160 feet 12 feet to the left, South bank, 29½ feet to the left North bank; 170 feet 9 feet to the left, South bank, 28 feet to the left, North bank; at 180 feet 7 feet to the left South bank, 25 feet to the left, North bank; at 190 feet 8 feet to the left, South bank, 25½ feet to the left, North bank; at 200 feet 7 feet to the left, South bank, 26 feet to the left, North bank; at 210 feet 7 feet to the left, South bank, 32 feet to the left, North bank; at 220 feet 3 feet to the left South bank, 23 feet to the left, North bank; at 230 feet 1 foot to the left, South bank, 20 feet to the left, North bank; at 240 feet 2 feet to the left, South bank, 18 feet to the left, North bank; at 250 feet 0 to the left South bank, 19 feet to the left, to North bank; at 260 feet 0 to the left to South bank, 20 feet to the left to North bank; at 270 feet 1 foot to the left to South bank, 19 feet to the left, North bank; at 280 feet 1 foot to the left, South bank, 20 feet to the left, North bank; at 290 feet 2 feet to the left, South bank, 19½ feet to the left North bank; at 300 feet, 0 to the left to South bank, 19 feet to the left to North bank.

I have prepared and file with this report a detail map entitled
"Map No. 4" showing location and dimensions of the North
2381 branch of the Potomac at junction of Forks, leading to Fairfax Stone, and the stone planted by W. McCulloh Brown, surveyor. This map shows dimensions of said stream according to the measurements set forth above.

At the request of the counsel for the state of West Virginia, we endeavored to measure the volume of water flowing in each of the forks of the river. At this point, we constructed a rude trough to collect the water, but we had no vessel or other implement of sufficient size to retain the water long enough to measure its volume, and were compelled to abandon the effort. There appears to me to be a considerably larger volume of water flowing from the branch leading from Fairfax Stone than from the branch leading from the monument set up by Mr. Brown.

Work was suspended for the present.

October 16th, 1899.

By previous arrangement, I went to the residence of John Slaughbaugh, with the following party: D. Y. Beavers and Charles [illegible]ier, Chainmen; Charles Mencar, Flagman; James Neville, Axeman; Where we were joined by W. McCulloh Brown, surveyor for Maryland. We then went to a place pointed out by J. Slaughbaugh

where Lynn pointers now stand, corner of said Slaughbaugh, formerly Christian Bachtle, and the end of the second line of John Pettijohn 330 acre tract, and identified by John Slaughbaugh as the point where the original Cherry corner stood, called for in the Patent to said Pettijohn, which point is designated on Map No. 1 by red letter and figure "B3," and ran by the calls of said Patent reversed, N. 45 Degrees E. (V. 3 Degrees 50′); at 104 poles set White Oak reference stake, from which point I ran N. 6° W. (V. 3° 50′.) 1.04 poles to point between two large White Oaks marked as pointers for Slaughbaugh's corner, another White Oak having been cut down by Michler in 1859. This point is designated on Map No. 1 by red letter and figure "B4"; from this point I ran S. 87° E. 14.65 poles; N. 77¼° E. 10.92 poles to reference stake in our
2382 main line at the — of 1809 poles from Fairfax Stone; thence S. 31½° W. 49.54 poles to a stone planted in corner of woods; South of Horse Shoe road, and claimed as the beginning corner of "Mt. Pleasant," and also corner of Daniel Gnegy. This point is designated on Map No. 1 by red letter and figure "B2." The stake above named standing at end of 1809 poles on our main line was lying down, and appears to have been moved slightly from its former position. Adjourned for day.

October 17th, 1899.

We then went to a point which is recognized as the sixth corner of Wm. Ashby's 300 acre tract, two Maples and White Oak, which is also corner of Deakins' 200 acres, and now corner of Preston Lumber & Coal Company, Greeleaf, John R. Bowman, and F. Rumer. This point is now a stake between large Maple blocked on one side and fallen White Oak, the second Maple being entirely gone. This corner was pointed out by Joshua Bowman and shown on Map No. 1 at red letter and figures "C14," thence running by Deakins' calls reversed, South 96 poles in all to a Chestnut stake in Fike's field; thence East at 229.28 poles crossed the Michler line North of Stahl's hill; at 263 poles in all set reference stake for the end of second line of the 200 acre tract, three White Oaks and Hickory called for; nothing found; from this point ran South, at 55.24 poles set reference stake, from which Point I ran West 33 poles; N. 0° 43° W. 3.92 poles; N. 20° 05′ E. 56/100 pole to Locust post with six (6) notches cut in it, planted at the point where Michler's stake stood on Stahl's Hill. Adjourned for the day.

October 18th, 1899.

Returned to stake in Fike's field at the end of South 96 poles on Deakins' line as run yesterday. From this point we ran West 133.7 poles, set reference stake in the "Meridian" line run by W. McCulloh Brown in 1897. Thence South 44.7 poles N. 61½° W. 9.7 poles to large White Oak, corner to W. A. Shaffer, an origi-
2383 nal corner to the Nicholas Wotring tract. This point is designated by red letter and figures "C11," thence with line of W. A. Shaffer and Preston Lumber & Coal Company, South 24.8

poles to a Cherry stump with stones piled about it, pointed out as beginning corner of Thebalt Shaffer tract.

This point is designated on Map No. 1 by red letter and figures "C12." We then went to the large White Oak, corner to Washington Fike and W. A. Shaffer, marked on the map by red letter and figures "C11," and ran with the lines of Fike and Shaffer S. 33° E. 82½ poles to large Sugar tree in a lane, well marked; thence S. 49° E. 43 poles to East bank of Rhine Creek.

From October 19th. to and including October 21st, we ran various other check lines for the purpose of more clearly identifying said tracts of land, but I deem it unnecessary to encumber this report with further details of said running, as said locations are shown in other ways in this report.

October 25th, 1899.

Met W. McCulloh Brown and party at Dobbin, West Virginia, on the North Branch of Potomac River. Mr. Brown near this place entered upon the survey of the main stream of the North branch of the Potomac, and continued said survey up same to connect with his former work on Laurel Run. This work occupied the time up to the latter part of the month of October 1899.

As Mr. Brown has reported this work, I deem it unnecessary to go into it more fully here.

November 15th, 1899.

I met W. McCulloh Brown and party at Hutton, Md., at which time he ran a number of lines of the Deakins 6000 acre tract, and also certain lines with a view to locating a tract of land patented by Maryland, called "Ashby Cove," the details of which running I do not deem it necessary to give here. After this, Mr. Brown ran certain lines with a view to locating an old Maryland patent called "Nompareil," which running is also reported by him and it is unnecessary for me to give it here.

2384 From November 24th. to and including, November 30th. 1899, Mr. Brown was engaged in running out the lines of various pieces of land according to the present holdings in the territory contiguous to, and within, the old Maryland patent called the "Diadem." In most instances these tracts of land embraced the lands both outside and inside of the lines of said old tract as located by Mr. Brown, and in scarcely any case did the lines of these tracts correspond with the original lines of said "Diadem" tract. This running is shown on the map and in the report and testimony of Mr. Brown, and I do not deem it important to incorporate it in this report.

December 1st, 1899.

Mr. Brown and party went to a stone pile claimed to be the beginning corner of Marshall Friend's 116 acre tract and the end of the first line of the 50 acres and the end of the third line of Elder Spring

tract, from which point he ran West 57 poles, thence South 6° West, at 162 poles crossed line fence between Bitner and Marshall Friend, 3.4 poles to the left of Edward John's fence; at 514 poles off-set to the right, 8.68 poles to a point at end of 44 poles on the fourteenth line of Elder Spring tract as located by Mr. Brown. We then went to the Black Gum and White Oak stump, shown as beginning corner of Elder Spring tract, and ran N. 6° E. 98 poles, thence N. 88° W. 80.92 poles to a line fence. Returned to the end of 98 poles on the previous line, and continued N. 6° E. 146 poles in all, thence N. 20° W. 80 poles, set stake, from which point he ran the following reference line, N. 21° E. 8/10 poles to white oak stump from stake N. 69° 45′ W. 53.52 poles to a stake at end of 162 poles in the South 6° W. line previously run. Adjourned to meet at Hutton, Monday December 4th, 1899.

December 4th, 1899.

Pursuant to a former agreement, I went to Hutton and there met Mr. Brown and party. On account of very stormy weather we were unable to accomplish any field work, and adjourned to a later date.

2385 December 8th and 9th, 1899.

Mr. Brown, Surveyor for the State of Maryland, and party returned to Hutton, Md., and did certain surveying with a view of locating the lines of the Deakins 6000 acre tract, Ashby's Cove and others. I was not present during the running of these lines, but Mr. Brown furnished copies of the notes taken. Later Mr. Brown also ran certain lines of all "The Chances," "White Rock," Siege of Acre Resurveyed," and "Troas Resurveyed," patents granted by the State of Maryland, lying along and near the boundary line, with a view of locating the same upon the map filed in this cause by the State of Maryland, and also certain reference lines to locate the ruins of a house situated upon the lands of John A. Reckard (indicated upon Map No. 1 filed herewith by a small circle and letters "W. R.") formerly occupied by Marshall Reckard. Mr. Brown furnished complete notes of these surveys, and covers the matter fully in his report and depositions, and I do not deem it necessary to give the details here. No further work was done until,

February 20th, 1907.

When, by previous arrangement, I went to Oakland, Maryland, with George C. Duvall and Robert Menear, as assistants, and there met Mr. Edward H. Sincell, assistant counsel for the State of Maryland, and W. McCulloh Brown, surveyor, but the weather proved so unfavorable that we were unable to do any field work, and, on February 21, 1907, I returned home.

April 1st, 1907.

By previous arrangement, I again went to Oakland, Md., with George D. Wolfe, Assistant, and there met Mr. Edward H. Sincell,

assistant counsel for the State of Maryland, and on the following morning,

April 2nd, 1907.

With the following party, Mr. Edward H. Sincell, assistant counsel for the State of Maryland, George D. Wolfe, Instrumentman, Edward I. West and Claude Brown, Chainman, and David
2386 Vaughn, Driver, went to Daniel Gnegy's near the head waters of Yough River and ran the following reference line, beginning at the Southeast corner of a 31 acre tract, owned by Daniel Gnegy lying in West Virginia, which is a red oak and hickory (red oak cut down,) pointed out to us by Daniel Gnegy, as standing on, or near, the State Line, and which point is indicated on Map No. 1 by red letter and figure "B5," and ran North 79 poles to a planted stone, common corner of Wm. Bitner, and said Gnegy, and the same point to which I ran reference lines to and from in 1894, notes of which appear previously in this report. Adjourned for the day and went to Amelias Fike's for lodging.

April 3rd, 1907.

Amelias and Silas Fike, who own the tracts of land marked "A. Fike" and "Silas Fike" on the Map, pointed out to us a large anciently marked white oak tree as standing on the "Old Maryland Line," and as a common corner between them, which point is indicated on Map No. 1 by red letter and Figure "B6." While neither Silas nor A. Fike could say that this white oak tree was the original corner of the John F. Goff 1000 acres, or the John Pettijohn 400 acre patents (granted by the Commonwealth of Virginia and heretofore mentioned). The property lines as recited in their respective deeds on the North side of A. Fike's tract of land and the South of Silas Fike's tract are common, and agree so nearly with the original patent lines, both as to course and distances and the objects on the ground that I am convinced that this tree is the original Northeast corner of the John Pettijohn 400 acre survey. Fences running North and South from this point are the division lines between West Virginia and Maryland land-holders, and are recognized in this neighborhood as standing on the "Old State Line." We then went to the residence of Henry H. Bechman, who lives on and owns the land marked "Bechman" upon Map No. 1, who pointed out a white oak tree as a common corner between his land
2387 and the lands of J. C. Dawson's heirs, and as standing on the "Old State Line" as recognized in this Neighborhood.

Said white oak being indicated on Map No. 1 by red letter and figure "B7." We then went to the residence of Lloyd Dawson, who lives on and owns the lands marked "J. C. Dawson 214" on Map No. 1, who also pointed out on the ground the above mentioned white oak, as a common corner between his lands and the land of H. H. Bechman, and as standing on the "Old State Line," as claimed and recognized in this neighborhood.

As before stated, this point is indicated on Map No. 1 by red letter and figure "B7." Survey was adjourned for the day and party drove to Oakland, Maryland.

April 4th, 1907.

Went to Hutton, Maryland, and from thence to the Northeast corner of a tract of land indicated upon Map No. 1 by the name "H. White" and figures "47," where Wesley DeBerry pointed out a stake upon the ground as the common corner between said White tract and the original "Bacorn" tract heretofore mentioned, as standing at a point where the original cherry tree corner stood and as standing on the "Old State Line" as claimed and *and* recognized in this neighborhood. Mr. DeBerry having owned for a number of years the Southern end of the "Bacorn" tract, above mentioned. This point is indicated on Map No. 1 by red letter and figure "D2." We then went to a stone pile at the Southeast corner of the tract of land marked on the Map No. 1 "Fredlock 210¼," which Mr. Wesley DeBerry pointed out to us upon the ground as his corner as held and recognized and as the point where the original Southeast corner of the Deakins 908 tract (of which said Fredlock tract is a sub-division), stood and as standing in the "Old State Line" as claimed and recognized in this neighborhood. Mr. DeBerry now owns and has owned for a number of years the above mentioned "Fredlock" tract. This point is indicated on Map No. 1 by red letter and figures "D1/2," and is the same referred to in this report on Page 11. Adjourned
2388 survey for the present and party returned to Oakland, Maryland.

April 9th, 1907.

Pursuant to previous arrangements, I went to Terra Alta, with George C. Duvall and George Robinson, as Chainmen, where we met Mr. James A. Sincell, Surveyor, in lieu of Mr. Edward H. Sincell, Attorney, who was unable to attend on account of illness. We then went to white oak spring run in the Groves-Metheny settlement, where Mr. Wm. T. Groves pointed out upon the ground a white oak stump standing on the North edge of the "Old Burchinal road," and on the East bank of white oak spring run, as his corner. Mr. Groves could not say that this was the original beginning corner of the John Rodeheaver 297 acre tract, not being familiar with the old title papers, but the description as given in his title papers, calling for this point and for his West and Southwest lines agree, both as to bearings and objects called for with the original John Rodeheaver title papers, and I have no doubt that this stump marks the original beginning corner of said survey. This stump is indicated on Map No. 1 by red letter and figures "D20," and is the same point from which I ran a reference line to the Monument on Snaggy Mountain in 1894, heretofore referred to.

A survey of said Rodeheaver 297 acre tract was made under and order of Circuit Court of Preston County, Virginia, in 1859, by Geo. M. Michael, S. P. C., His report and map of which, showing the location of this beginning corner is filed herewith marked "Monroe Exhibit No. 70." The party then drove to Browning's Hotel, Cranesville, Va.

April 10th and 11th, 1907.

Unable to do any field work on account of severe snow storm.

April 12th, 1907.

Went to the residence of Mr. Eli G. Albright about 1 mile west of Cranesville, where said Albright pointed out upon the ground a common corner between his land and the land of Marcellus Albright.

Said Marcellus Albright's tract being indicated on Map No. 1
2389 by the word "Albright" and figures "120." This point is the Northeast corner of a tract of land containing about 30 acres known as the Engle or Doll land, and originally owned by John Crane. Its description conforms to the Northern portion of the John Crane 491 acre survey. This point is indicated on Map No. 1 by red letter and figures "F 13." In the afternoon the party went North to the residence of Joseph Guthrie, where they lodged for the night.

April 13th, 1907.

Went to chestnut tree, a common corner to the lands of Joseph Guthrie and the Isaac C. James tract (now owned by — Thomas), which was identified and pointed out upon the ground by Joseph Guthrie, and which point is indicated on Map No. 1 by red letter and figure "H1," heretofore referred to in this report. We then went to the Southeast corner of the Fear 50¼ acre tract, which was pointed out to me upon the ground at the junction of line fences by A. J. Thomas, who now owns the Fear lands, as a common corner of the Fear and Evans, or James, tracts, and as standing in the "Old State Line," as claimed and recognized in that neighborhood.

This point is indicated on Map No. 1 by red letter and figure "H2." We then ran the following reference line from this point S. 45° 25′ W. 21.44 poles N. 86° 45′ W. 37.84 poles; S. 34° 30′ W. 26.28 poles to the chestnut snag ("H1") above mentioned. We then drove North to a tract of land indicated on the Map by the name "Jacob Thomas" and figure "100" where G. Thomas (the son of Abraham Thomas, who lived upon this tract of land at the time of our survey in 1894), pointed out to me on the ground a large stone heap as the Northeast corner of this tract of land, and the North west corner of lands owned by his father and brother in Maryland, and as standing at the intersection of the "Old State Line" and the Mason and Dixon, or Pennsylvania Line, as claimed and recognized on this neighborhood. This point is indicated on Map No. 1 by a small circle in the Mason and Dixon line near a larger circle enclosing the

letters "W. Z.," and stands 61 poles West of the hewn stone
2390 Monument heretofore referred to as being erected by the Commissioners of Pennsylvania and West Virginia, while marking their boundary line, and is the same point indicated on W. McCulloh Brown's map in this cause by the letters "W. Z."

Having no instructions to do further work, the survey was adjourned and the party returned to their homes.

2391 From the data gathered during the surveys above mentioned, I have prepared four maps which are filed in this cause accompanying this report, numbered 1, 2, 3, and 4 respectively.

Map No. 1 represents the "Michler Line;" the line farther West as run by W. McCulloh Brown, Surveyor in this cause for the State of Maryland, and designated on his map as "Potomac Line;" the "Old State Line," or "Deakins Line" as claimed and held up to, by the citizens of West Virginia; The reference line as run by me in this cause, from the Fairfax Stone to the Pennsylvania Line; The lines of the original grants from Virginia, showing their present subdivisions; also, several tracts patented in Maryland lying on both sides of the "Old State Line" as claimed by citizens of West Virginia. There is also laid down accurately on this map, as well as on maps Nos. 2 and 3, all the small streams in the vicinity of the Fairfax Stone which flow into the Potomac and Cheat Rivers.

Map No. 2 is intended to represent only the out-lines of the original grants from the Commonwealth of Virginia, and the points designated on Map No. 1 as standing in the Old State Line; the Maryland grants which lap on the Virginia patents; The "Michler Line" The line West of the Michler line, run by W. McCulloh Brown in 1897; The reference line run by me in 1894; The roads and streams shown on Map No. 1.

Map No. 3, represents the Eastern boundary of Virginia land grants as held by citizens of West Virginia as the "Old State Line;" The several points located in said line as shown on Maps Nos. 1 and 2; The "Michler Line;" The roads and streams; The names of the persons owning the lands adjacent to said old line, etc.

Map No. 4 represents the relative size and positions of the two branches of the Potomac River at their junction, near Fairfax Stone.

A statement showing the costs of these surveys, Maps, and other expenses incidental thereto, is filed in this cause, marked "Supplemental Report No. 2, of Julius K. Monroe, Surveyor for the State of West Va., Costs of Surveys, etc."

JULIUS K. MONROE,
Engineer for the State of West Virginia.

2392 Endorsed: Supreme Court, U. S. No. 1, Original, Oct. Term, 1907. Maryland *v.* West Virginia. Filed Oct. 15, 1907.

Office, Supreme Court, U. S. Filed Oct. 15, 1907. James H. McKenney, Clerk.

2393 Maps Nos. 1, 2, 3, 4 & 5 filed with the Report of Julius K. Monroe (not to be printed).

2394 In the Supreme Court of the United States. In Equity.

THE STATE OF MARYLAND
vs.
THE STATE OF WEST VIRGINIA.

Depositions Taken on Behalf of the Defendant in Preston County, West Virginia, from August 20th to August 29th, 1896.

Defendant's Depositions.

Supreme Court U. S. No. 1, Original Oct. Term, 1907. Maryland *v.* West Virginia Filed Oct. 15, 1907.
Office Supreme Court U. S. Filed Oct. 15, 1907. James H. McKenney, Clerk.

2395 In the Supreme Court of the United States. In Equity.

STATE OF MARYLAND
vs.
STATE OF WEST VIRGINIA.

It is agreed that the depositions taken on behalf of the State of West Virginia in the above entitled cause between the 20th day of August, 1896, and the 30th day of August, 1896, before Julius X. Monroe, a Notary Public, which depositions are hereto attached, may be read as evidence on behalf of the said State of West Virginia in said cause; the Attorney for the State of Maryland having waived the service of notice for the taking of said depositions, as provided in the stipulation between counsel heretofore entered into and filed in this cause.

HARRY M. CLABAUGH,
Attorney General of State of Maryland.
GEO. E. PRICE,
Of Counsel for West Virginia.

2396 In the Supreme Court of the United States.

STATE OF MARYLAND
vs.
STATE OF WEST VIRGINIA.

It is agreed between the parties to the above entitled cause that the depositions of witnesses to be taken by either party may be taken by means of a Stenographer and said parties waive the right to insist upon each witness signing his deposition and agree that the Stenographic notes of the testimony may be taken at the time that the deposition is given and afterwards written out and that they

shall have the same force and effect as if regularly signed by the witnesses respectively.

FLOURNOY & PRICE,
Of Counsel for West Virginia.
HARRY M. CLABAUGH,
Attorney General of Maryland.

2397 In Equity. In the Supreme Court of the United States.

THE STATE OF MARYLAND
vs.
THE STATE OF WEST VIRGINIA.

Depositions of witnesses taken in Preston County, West Virginia, before me, Julius K. Monroe, a Notary Public for said Preston County, at the several times and places hereinafter set forth, pursuant to the stipulation of counsel hereto attached, to be read as evidence on behalf of the defendant, in a chancery cause now pending in the Supreme Court of the United States, wherein the State of Maryland is plaintiff, and the State of West Virginia is defendant.

Residence of Lloyd Dawson, Union District, Preston County, West Virginia, August 20th, 1896.

Present: George E. Price, attorney for the State of West Virginia.

LLOYD DAWSON, a witness produced on behalf of the State of West Virginia, deposes as follows:

Examination by Mr. PRICE:

First Question. What is your age, Mr. Dawson?
Answer. 40.
2nd Question. Where do you reside?
Answer. I reside right here, in Union district, Preston county, near Eglon.
3rd Question. How near to Chisholm's Mill do you reside?
Answer. Half a mile.
4th Question. How long have you lived, where you now reside?
Answer. I was born and raised right here.
5th Question. What was your father's name?
Answer. James C. Dawson.
6th Question. Did he live on the same place that you now reside on?
Answer. Yes, sir.
7th Question. When did he come to that place, and how long did he live there?
Answer. He moved here in 1847. He bought it the year before.

2398 8th Question. Look at the paper now shown you, marked Exhibit No. 1, and recorded in book 28, page 36, in the office of the county clerk of Preston County, and state what it is?

Answer. It is a deed of William Chisholm, to James C. Dawson.

9th Question. What is the date of that deed?

Answer. The 15th day of September, 1846.

10th Question. Is that the deed for the land upon which your father resided, and upon which you now reside?

Answer. Yes, sir.

11th Question. Are you acquainted with the eastern boundary of your land, along the Maryland line, as claimed by your father, and yourself?

Answer. Yes, sir. There are two points we claim, from the tree in the Maryland line, to the forks of the creek.

12th Question. Is there a fence along your line, where you claim it to join the Maryland line?

Answer. Yes, sir.

13th Question. How long has that fence been there? How long has there been a fence there?

Answer. Well, there was part of the fence there prior to 1846, and the balance of it was built in 1848. I get that information from my father.

14th Question. State as to what your recollection is about that fence?

Answer. Well, the fence has been in its present position, ever since I can remember.

15th Question. Do you know where the Michler line runs, along your eastern boundary?

Answer. Yes; I guess I know where it runs.

16th Question. Has there been, in your recollection, and is there yet, any marks to indicate, where the Michler line is?

Answer. Yes, sir; there is timber, a strip of timber cut through. You see this lower end now is obliterated now, where it is cleared out, but this upper end there is about 15 rods to show where it comes through. It is only about a rod wide. It was only cut wide enough to leave an opening.

2399 17th Question. Do you yourself remember when the Michler line was run?

Answer. No, sir.

18th Question. How do you know then that the cuttings thereof which you have spoken, indicate the Michler line?

Answer. I guess I get that information from my father, and those around that were older, that know when it was. Here is John Roth, living up here yet, that helped cut this line here clear through.

19th Question. How is this Michler line located with reference to the line as you claim it, the Maryland line, as you claim it?

Answer. I guess I had better say it is located west of it.

20th Question. About how far west of it?

Answer. About eight rods at the south end, and about nine rods at the north end.

21st Question. Have you ever measured the distance between the line, as you claim it, and the Michler line?

Answer. No, sir.

22nd Question. Has there ever been any claim, by the persons owning the land on the Maryland side, opposite to your land, to come beyond your fence, westward?

Answer. Yes, sir, there has been claims. It was at one time claimed by August Smith to run over to the Michler line, but he afterwards abandoned it.

23rd Question. In what state and county have you and your father paid taxes upon the tract of land, upon which you now reside?

Answer. State of West Virginia, and county of Preston. This was Virginia, when my father first bought here.

24th Question. This land upon which you now reside, is a part of what original tract?

Answer. To my best information it is off of the Goff tract.

25th Question. Who owns the land, adjoining the Maryland line, just south of you?

Answer. H. H. Beckman.

26th Question. And who south of Beckman?

2400 Answer. Silas File.

27th Question. And who south of him?

Answer. William Weimer.

28th Question. How does your line along the Maryland boundary correspond with the lines of Beckman, Silas Fike and William Weimer?

Answer. It is a straight, continuous line.

29th Question. Have they fences along the Maryland line, on their farms?

Answer. I believe it is fenced clear through, now. Some of those fences are of recent date, though. This land of Silas Fike's has been, part of it, fenced a long time along the line.

30th Question. How about Beckman's?

Answer. You see Beckman's fence—I cannot tell you just what date that was built. I. G. Kitsmiller built that fence, when he lived there.

31st Question. Have you and Beckman a common corner on the Maryland line?

Answer. Yes, sir.

32nd Question. Who owns the land north of you along the Maryland line, in West Virginia?

Answer. Daniel E. Offutt.

33rd Question. How long has he owned it?

Answer. I think he bought it in 1890.

34th Question. From whom did he buy?

Answer. Mary J. Irish.

35th Question. Do you know how far his land extends along the Maryland line?

Answer. That is a pretty hard question. Alex Mason told me about a year ago, it is something near 600 rods, according to my best information.

36th Question. Do you know whether Offutt, and those under whom he claims, claimed east of the Michler line, or not?

Answer. They all claimed to the old line, or Deakins line.

37th Question. Do you know of any acts of Offutts, or those under whom he claims, showing that they claimed beyond the Michler line?

Answer. Why, he cut the timber over to the old line.

2401 38th Question. Do you know where the line is that was run by Julius K. Monroe, a surveyor, under the orders of the Supreme Court of the United States, in this case, in the fall of 1894?

Answer. Yes, sir, I know where he run that lower part there.

39th Question. Were you with them at any time, while they were running along your eastern boundary?

Answer. I was with them from below Mrs. Bowman's house, until out to the open road.

40th Question. How does that line, as run by Monroe, lie with reference to the State line, as you claim it?

Answer. It lies east of the line, as I claim it.

41st Question. Can you tell about how far east of the line, as you claim it?

Answer. I did not take any measurement of it. The surveyor measured the lower corner, and it was 22 rods or a little over.

42nd Question. That is, at the lower or northern corner, the distance between the line as you claim it, and the line as run by Monroe, was about 22 rods?

Answer. Yes, sir.

43rd Question. Do you know out of what original tract, the lands now owned by D. E. Offutt, are a part?

Answer. They were of the Goff land.

44th Question. On whose land is what is known as the Chisholm mill?

Answer. It is on D. E. Offutt's.

45th Question. What important public road is it on?

Answer. The North-western Turnpike.

46th Question. Do you know whether there is a monument on the Northwestern turnpike, near Chisholm's mills, intended to designate the Michler line?

Answer. Yes, sir.

47th Question. Is there any other corner stone, or stone of any kind near there?

Answer. There is a stone east of there about 12 rods.

2402 48th Question. East or west of the Michler line?

Answer. It would be east of the Michler stone.

49th Question. Do you know what the stone you have last mentioned, is intended for?

Answer. To my best information, it is a corner stone between Frances Martin, and what is now the John Dick farm.

50th Question. These farms of Frances Martin and John Dick,—do they lie in Maryland or West Virginia?

Answer. They lie in Maryland.

51st Question. Claimed under Maryland titles, are they?

Answer. Yes, sir.

52nd Question. And this stone about 12 rods east of the Michler monument, is the corner stone of those two tracts, according to your information?

Answer. Yes, sir.

And further deponent saith not.

(Signature of witness waived by stipulation of counsel.)

Residence of Simon D. Whetzell, Union District, Preston County, West Virginia, August 20th, 1896.

Present: George E Price, attorney for the State of West Virginia.

SIMON D. WHETZELL, a witness produced on behalf of the State of West Virginia deposes as follows:

Examination by Mr. PRICE:

1st Question. What is your age?

Answer. Forty-six years old.

2nd Question. And your place of residence?

Answer. Well, I was born in this county, I now reside in Union district, Preston county, on the Chisholm Mill farm.

3rd Question. On what public road?

Answer. The Northwestern turnpike.

4th Question. Who is the owner of the Chisholm mill farm, upon which you reside?

2103 Answer. D. E. Offutt has owned it for eight years—seven years, I believe, next month.

5th Question. Where does D. E. Offutt reside?

Answer. Oakland, Md.

6th Question. How long have you resided on this Chisholm mill farm?

Answer. Six years, I believe, in January, last January, going on seven years.

7th Question. Where did you live before you came to this farm?

Answer. I lived down about five—well, I lived in Portland district in this county, about ten or twelve miles from here.

8th Question. How long have you known of this place?

Answer. I guess may be fifteen years ago was the first about I guess I ever saw it.

9th Question. Has there been a house upon it, and has it been cleared land, along the pike, since you have known it?

Answer. Oh, yes, sir. There is land cleared here, that has been cleared a good while, before I have known it. It has been cleared ever since I have known it, and a good while before.

10th Question. What is the reputation and tradition of this neighborhood, as to how long this property has been cleared and occupied by a resident?

Answer. Well, they tell me this house down here was 80 years old when it was torn down.

11th Question. Is there any monument on the Northwestern turnpike to mark the Michler line between Maryland and West Virginia?

Answer. Yes, sir; there is one over here. It is near the Chisholm mill property, right adjoining it, you might say.

12th Question. Just east of it?

Answer. Yes, sir.

13th Question. Is there a fence on the line between Maryland and West Virginia, forming the eastern boundary line of this Chisholm mill property?

Answer. Yes, sir.

14th —. Is the land cleared up to that fence, on the West Virginia side?

Answer. Yes, sir.

2404 15th Question. How long has there been a fence there, so far as you know?

Answer. Well, there has been one there I reckon, six years ago last spring, I know of it being fenced, and then of course there is an older fence there that I rebuilt.

16th Question. You mean that six years ago you built the present fence, rebuilding the old fence that had been there before?

Answer. Yes, sir; built it on the same line, it was on before.

17th Question. Do you know what was the appearance of the old fence at the time you rebuilt it six years ago? Did it appear to be a very old fence?

Answer. Oh, my, yes, from the way it was rotted up. The ends were rotted off. Some of the rails were rotted up until they fell to pieces when you pulled the brush out of them. There was different kinds of timber, some cherry rails, some white oak, and some would last longer than others. Some rails were entirely worthless, and now and then you would find one that would be sound, of some different better timber.

18th Question. Where is that fence, with reference to the Michler line, upon which the monument stands?

Answer. Well, it is east. That is, the fence is east of the line, the monument.

19th Question. About how far east of the new or Michler line, is it?

Answer. Oh, I guess it is twelve or sixteen rods, or may be not quite so much.

20th Question. Whose land adjoins this Chisholm land on the south, on the West Virginia side?

Answer. Lloyd Dawson adjoins this.

21st Question. How does the fence on this Chisholm tract, along the Maryland line, correspond with the line of Dawson's tract, along the said line?

Answer. Well, it is tolerably well. It varies some little after you cross the creek, up here, but it corresponds pretty well with it, pretty near straight. It turns a little to the left, as you go further south.

22nd Question. Is there a common corner between this Chisholm tract, and Dawson's land, on the Maryland side?

2405 Answer. Yes, sir. Well, there is a common corner, but it is about washed out.

23rd Question. Both call for the same thing?

Answer. Yes, sir.

24th Question. What is that corner called for?

Answer. A stone standing in the east bounds of the forks of the creek. We had an old plat here last spring that called for that, but we couldn't find the stone.

25th Question. Who owns the land on the Maryland side, opposite from this Chisholm tract?

Answer. A man by the name of Dick. I don't know his first name. He lives in Lonaconing—and the widow Bowman, and Frances Martin, adjoins it for a short distance.

26th Question. Do you know where the corner on the Maryland line is, between the Dick and the Martin tract, as they claim it?

Answer. No, sir; I don't think I do, exactly.

27th Question. Has Dick or Martin ever had any possession of the land west of the fence, of which you have spoken, that was rebuilt by you?

Answer. No, never had any possession on this side of the line fence to my recollection, neither of them, Martin nor Dick.

28th Question. Their possession then only extends up to that fence some 12 or 15 rods east of the new Michler line—is that right?

Answer. Yes, sir.

29th Question. Do you know who owned this Chrisholm tract before Mr. Offutt bought it?

Answer. Well, it was called the Irish tract, and belonged to some woman in Baltimore, I believe. I believe her name was Irish.

30th Question. Who lived in this house before you came here?

Answer. Why, a man by the name of Weimer, I believe, Lewis Weimer.

31st Question. Do you know how long he had lived here?

Answer. Only a couple of years, and I believe only one year. He lived here one year before I came here.

32d Question. Has there always been some one living on
2406 this land since you have known it?

Answer. Yes, sir, there has been somebody living on it, ever since I have known it, and a good while before.

33rd Question. Who owns the land north of this Chisholm tract, along the Maryland line, on the West Virginia side?

Answer. Well, Bowman's down here, is the first that comes in, Joshua Bowman, John R. Bowman, and over the other side of Bowman's then, Ashbys come in.

34th Question. Do you rent this land from Mr. Offutt, or are you here simply as his manager?

Answer. As his manager. I haven't it rented. Am taking care of the farm.

35th Question. You said you did not know where the Dick and Martin corner is?

Answer. No, sir.

36th Question. Were you present when the line was run by Julius

Monroe, surveyor, in the fall of 1894, in this case along by this Chisholm land?

Answer. Well, a little of it, part of it.

37th Question. Was the line run by Monroe east or west of the fence, which you rebuilt some years ago?

Answer. East of the fence.

38th Question. About how far?

Answer. Well, I would think between 30 and 40 rods, some place along there. Some places it is 40 rods, and where the line crosses the creek, it is more than 30 rods. Up here where it crosses the Northwestern turnpike, it is about 25 or 30 rods.

39th Question. Do you know where there is a stone along the Northwestern turnpike, just east of the Michler monument?

Answer. Yes, sir, there is a small one.

40th Question. How does that stone correspond with the line of your fence?

Answer. Well, it is right in line of the fence that I rebuilt.

41st Question. Do you know what the original tract, that this is derived from, was called?

Answer. Well, it was settled here—I don't know it to be so,
2407 they say it was settled here by the Goffs, and Mr. Offutt has some kind of a plat or something, called the old Goff title. It has been so long ago, I don't know anything about it.

42nd Question. About how far does this Chisholm land extend along the Maryland line?

Answer. Well, it is I reckon a mile and a half, over a mile anyhow.

And further deponent saith not.

Signature of witness waived by stipulation of counsel.

Bowman's Saw Mill, Union District, Preston County, West Virginia, August 21st, 1896.

Present: George E. Price, attorney for the State of West Virginia.

PETER F. NINES, a witness on behalf of the State of West Virginia, deposes as follows:

Examination by Mr. PRICE:

1st Question. What is your age?

Answer. 49 past.

2nd Question. Where do you reside?

Answer. Sunnyside, Garrett county, Maryland.

3rd Question. How long have you resided there?

Answer. About 24 years.

4th Question. On what tract or tracts of land is your residence situated?

Answer. Why, on the soldier lots, the part of Royal Charlotte.

5th Question. Do you know the numbers of the military lots on which you reside?

Answer. I think mine is 317 and 318—I am not sure—and the one I just bought is 316.

6th Question. What tract of land adjoins military lot No. 318 on the north?

Answer. That would be Buckdale.

7th Question. Is there a common corner between the Buckdale, and the military lot No. 318?

Answer. Well, I couldn't hardly tell you that. That corners in there somewhere, but I never was in there with them when they run it, and couldn't say just whereabouts, Buckdale calls for my beginning there.

2408

8th Question. From whom did you get your title for the military lots 318 and 317?

Answer. Well, I got them from my father.

9th Question. Did he live on those lots?

Answer. No, sir, my grandpap lived on those lots, He got them of him, bought out the heirs.

10th Question. Who was your grandfather?

Answer. Peter Martin. It was on my mother's side.

11th Question. Do you know how long your grandfather lived on those lots?

Answer. No, I couldn't tell you that, but he made the first beginning, it has been a good many years ago, the first improvement.

12th Question. When did your grandfather die?

Answer. He died during the war.

13th Question. Did he live on those lots up to the time of his death?

Answer. Yes, sir.

14th Question. Who has lived on the lots since his death?

Answer. Well, one of his girls, an old maid, lived there after he died, and she lives there yet. She lived there awhile after his death until I moved there. She kept house for him a long time, and she never got married, and is still living there yet.

15th Question. Do you know where the line was run by Julius K. Monroe, surveyor in this case, in the fall of 1894, along near these military lots?

Answer. No, I don't—Yes, I do know something near. I seen the tracks. Of course I didn't see it, but I just saw where you went there.

16th Question. How is that line with reference to the western line of your military lots?

Answer. Well, you run about half way between the military lots, and what we call the old state line, the Deakin line.

17th Question. About how far west of the military lots?

Answer. Well, I never paid much attention to it. As near as I could guess just to guess at it, I would think it would be 12 or 14 rods, or something along there. I never measured it. I never paid any attention to it.

2409

18th Question. Do you know the location of a tract of land called Eel Shine?

Answer. Yes, I know a little something about it.

19th Question. Where does that tract of land lie?

Answer. Well, it lays between these military lots, and what we call the old state line, the Deakin line.

20th Question. How far does it extend to northward?

Answer. I do not remember how far.

21st Question. Northward it extends as far as the north end of your military lot, No. 318, doesn't it?

Answer. Yes, sir; and the south end of it runs a little further south than lot No. 316.

22nd Question. Who owns the Eel Shine tract now?

Answer. I own it now.

23rd Question. When did you get it?

Answer. A month ago, or a little more.

24th Question. From whom did you purchase it?

Answer. John Mitchel.

25th Question. Is there anyone living on it?

Answer. No, sir, not at this time.

26th Question. Has there been anyone living on it?

Answer. Yes, sir; a man by the name of Dave Clair did live on it, and a man by the name of Roomer lives on it now.

27th Question. When was that house built there?

Answer. It has been built about two years, I reckon.

28th Question. Had there been any house on that Eel Shine tract before that house was built?

Answer. No, sir.

29th Question. Whose lands do you claim adjoin the Eel Shine tract on the west?

Answer. Well, the Goff land.

30th Question. Who owns it now?

2410 Answer. Well, Dan Offutt owns a part of it, and Bowman a part here, and then there is a 50 acre tract, the Ashbys have taken up. I don't know what they call that.

31st Question. That 50 acre tract adjoins the Eel Shine on the north, doesn't it?

Answer. Yes, sir.

32nd Question. Do you know where the new Michler line is along in that neighborhood.

Answer. Yes, sir, I know where they claim it to be.

33rd Question. You did not see it run, did you?

Answer. No, sir, I did not see it run.

34th Question. Now, where is the Michler line with reference to the Eel Shine tract?

Answer. Well, it is about—it is west of the Eel Shine tract, I wouldn't know hardly how far, but I would think about—I wouldn't know hardly what to say, but my best judgment would be about 15 or 16 rods.

And further deponent saith not.

Signature of witness waived by stipulation of counsel.

Residence of Joshua H. Bowman, Union District, Preston County, West Virginia, August 21st, 1896.

Present: George E. Price, attorney for the State of West Virginia.

JOHN R. BOWMAN, a witness produced on behalf of the State of West Virginia, deposes as follows:

Examination by Mr. PRICE:

1st Question. What is your age?

Answer. 34 I think.

2nd Question. Where do you reside?

Answer. Preston county, West Virginia.

3rd Question. Do you own any land adjoining the boundary line, between Maryland and West Virgina?

2411 Answer. According to my deeds, I do, yes, as I understand them. I claim the line, wherever it is.

4th Question. From whom did you get the land that you own?

Answer. I got the land from my father. The land was sold to my brother in the first place, and of course we just took up the land, as he had agreed, and then paid for the land, you know, and after we had this paid or settled, in order to divide it up, we just deeded it to my father, and then he had the entire lot, you know, and he just located lots to each of us separately. It makes me then buying of my father.

5th Question. About how long since you obtained your deed from your father?

Answer. Well, something like not over a year. I don't remember at all myself very well, probably something like a year.

6th Question. From whom did your father get the land?

Answer. My brother and I bought it from W. H. Glover, and then deeded it to my father.

7th Question. Do you know where the tract called Eel Shine, now claimed to be owned by Peter F. Nine, is claimed to lie?

Answer. Yes, I know where they claim it to be, so far as it runs on me. I do not know where it lays further than our own land. I couldn't locate the land where it lays farther than my own tract of land.

8th Question. How do you claim your land along the Maryland line, with reference to the Eel Shine? Do you claim to run across the Eel Shine, or simply to adjoin it on the west side?

Answer. Why, I claim to cross it.

9th Question. You claim that your part of it, runs clear across it?

Answer. Yes, I guess I could say that all right, that it crosses it.

10th Question. Have you ever had your lines run, or seen them run, on that part of the land which conflicts with the Eel Shine?

Answer. Yes, I have had them run.

11th Question. When they were so run, did the lines extend across the Eel Shine?

Answer. Yes.

2412 12th Question. In what county and state do you pay taxes on that land?

Answer. West Virginia.

13th Question. Have you paid taxes on it since you have owned it?

Answer. Yes, sir.

14th Question. What large tract of land is yours derived from? What is the tract known as?

Answer. Known as Goff. That is as far as I can tell.

15th Question. Known as Goff land?

Answer. Yes, sir.

16th Question. Who owned the land before William H. Glover got it?

Answer. Thomas Listen.

17th Question. Who owned it before Thomas Listen?

Answer. Thomas Coddington.

18th Question. Do you know who owned the land before Thomas Coddington?

Answer. I don't know. I couldn't say.

19th Question. Who owns the land along the Maryland — south of you, on the West Virginia side?

Answer. D. E. Offutt.

20th Question. Is that the same Offutt land that extends to Chisholm's mill?

Answer. Yes, sir.

21st Question. Who owns the land on the West Virginia side, north of you?

Answer. That is my brother, Daniel R. Bowman.

22nd Question. From whom does your brother Daniel R. Bowman get title to the land that he owns adjoining you?

Answer. Gets it of my father.

23rd Question. Do you know what original tracts his land is embraced in?

Answer. First, part of the Coddington, and Glover land, and second part of the William Ashby tract, and third, part of the Michael Wilt tract.

24th Question. Do you know to what original tract, the Michael Wilt land belonged?

Answer. No, I don't know.

25th Question. Do you know a tract of 50 acres that was 2413 patented to William Ashby, August 1st, 1851?

Answer. Yes, sir; I know that tract.

26th Question. Who owns that tract now?

Answer. My brother, Daniel R. Bowman.

27th Question. How does that 50 acres tract lie, with reference to the Eel Shine tract?

Answer. It lies north of it.

28th Question. Do you know whether your brother Daniel R. Bowman has paid taxes on that 50 acre tract of land or not, since he has owned it, and whether your father paid taxes on it, when he owned it?

Answer. I guess I had better say he did. I think that would be all right, and my father did also.

29th Question. In what state and county did they pay taxes?
Answer. West Virginia, Preston county.

And further deponent saith not.

Signature of witness waived by stipulation of counsel.

Whereupon came JOSHUA H. BOWMAN, at the same time and place, a witness produced on behalf of the State of West Virginia, who being duly sworn, deposes as follows:

Examination by Mr. PRICE:

1st Question. What is your age?
Answer. 65, will be.
2nd Question. Where do you reside?
Answer. Preston county, West Virginia.
3rd Question. You are the father of Daniel R. and John R. Bowman?
Answer. Yes, sir.
4th Question. Do you know the lands now owned by Daniel R. and John R. Bowman, adjoining the Maryland line?
Answer. Yes, sir.
5th Question. Did you own those lands at any time?
Answer. I did.
2414 6th Question. How long?
Answer. Not long.
7th Question. About how long?
Answer. Well, I couldn't tell that just exactly. I didn't charge my memory with it at all, but it was quite a short while. That is, I mean, the part that is known as the Coddington lands, the Glover may be would be plainer now.
8th Question. Do you know where the Michler line is claimed to be?
Answer. Well, yes, I know about where they claim it.
9th Question. Does this Coddington or Glover land interfere with the Eel Shine?
Answer. It runs across it.
10th Question. Do you know where the military lots are in Maryland, owned by Peter F. Nine?
Answer. Yes, sir; I know where they say it is. I never saw it run out myself.
11th Question. Is it claimed by you, and those under whom you claim that the Coddington or Glover land, extends across the Eel Shine to the military lots?
Answer. That is what the title says, that we got of Glover.
12th Question. Is that what you claim?
Answer. That is what we claim.
13th Question. Do you know the location of the 50 acre tract patented to William Ashby in 1851?
Answer. Well, it is north of Eel Shine. Yes, I know it.

14th Question. Do you know what tract adjoins the 50 acres on the Maryland side?

Answer. Buckdale, I guess.

And further deponent saith not.

Signature of witness waived by stipulation of counsel.

Whereupon came DANIEL BOWMAN, at the same time and
2415 place, a witness produced upon behalf of the State of West Virginia, who being duly sworn, deposes as follows:

Examination by Mr. PRICE:

1st Question. What is your age?

Answer. 32.

2nd Question. Where do you reside?

Answer. Brookside, Preston county.

3rd Question. Do you own any land adjoining the boundary line between Maryland and West Virginia?

Answer. Yes, sir.

4th Question. Whose land adjoins you along the Maryland line on the south? Who adjoins your individual land?

Answer. On the south—well, Offutt, on the line, and Johnson.

5th Question. Does your land run up to Offutt, the land you own individually?

Answer. Yes, sir.

6th Question. Who owns the land north of you along the Maryland line?

Answer. Why, Thomas Ashby.

7th Question. Do you know where the Eel Shine tract of land is claimed to be?

Answer. Yes.

8th Question. Does your line extend across the Eel Shine to the military lots?

Answer. Yes, sir.

9th Question. Do you know a tract of 50 acres that was patented to William Ashby in 1851?

Answer. Yes, sir.

10th Question. Who owns that now?

Answer. I do.

11th Question. You also own a part of the William Ashby 300 acre tract, do you?

Answer. Yes, sir.

2416 12th Question. In what state and county have you been paying taxes on these lands, that you now own?

Answer. Preston county, West Virginia.

13th Question. Do you know where the line is that was run by Julius Monroe last fall a year ago?

Answer. Yes.

14th Question. Do your lands extend as far eastward, as that line is?

Answer. Yes, they run over that line.

15th Question. Do you know where the Buckdale corner is?

Answer. Well, I know where I have been shown.

16th Question. Does this 50 acre Ashby tract which you now own, adjoin the Buckdale?

Answer. Yes, it calls for Buckdale corner.

17th Question. How does it lie with reference to where the Eel Shine tract is claimed?

Answer. It lays a little west of the eastern boundary of Eel Shine. The eastern boundary of the 50 acre tract, is a little west of the Eastern boundary of Eel Shine.

18th Question. I mean, take the whole 50 acres—does it lie north of it, or how?

Answer. It lies north of Eel Shine.

19th Question. There is no Maryland title claimed by anybody to cover the 50 acre Ashby tract, is there?

Answer. No, sir.

20th Question. Is there any Maryland title claimed to cover that portion of the 300 acre Ashby tract, which you own?

Answer. No, sir.

21st Question. Have you seen the lines run of your Glover-Coddington tract?

Answer. Yes, sir.

22nd Question. When those lines were run, did they or not, extend across the Eel Shine?

2417 Answer. Yes, they extended across the Eel Shine.

23rd Question. Look at the paper now shown you, being a deed from William H. Glover and wife to John R. Bowman and Daniel R. Bowman, dated April 20th, 1889, and state whether this is the deed covering what is known as the Coddington tract?

Answer. Yes, sir.

24th Question. That deed has never been recorded has it?

Answer. I don't know if it has or not. Glover promised to have it put on record.

Copy of the deed referred to is filed with these depositions, marked Exhibit No. 2.

And further deponent saith not.

Signature of witness waived by stipulation of counsel.

Bowman's Saw-mill, Union District, Preston County, West Virginia, August 21st, 1896.

Present: George E. Price, attorney for the State of West Virginia.

PARKER ASHBY, a witness produced on behalf of the State of West Virginia, being duly sworn, deposes as follows:

Examined by Mr. PRICE:

1st Question. How old are you?

Answer. Well, sir, I cannot tell you exactly how old I am, but I am 50. I do not recollect exactly when I was born, but if I recollect right I am going on 52.

2nd Question. Where do you reside?

Answer. I reside in Garrett county, Maryland.

3rd Question. Are you acquainted with the old tract of 300 acres of land, that was patented to William Ashby, by the state of Virginia?

Answer. Well, yes, I am.

4th Question. What kin was that William Ashby to you?

Answer. Why, he was my great grand-father.

2418 5th Question. Do you now reside within the original lines of that old tract?

Answer. Yes, sir.

6th Question. How long have you resided where you now live?

Answer. Well, if I recollect right, we moved there in 1854. That is my recollection. I cannot say positively, but it is my recollection it was in 1854.

7th Question. What was your father's name?

Answer. Thomas Wilson Ashby.

8th Question. Is he still living?

Answer. No, sir; he is dead.

9th Question. When did he die?

Answer. I think if I recollect right, the 5th of last March.

10th Question. Did he continue to live where you now live from the time he moved there in 1854, up to the time of his death?

Answer. Yes, sir.

11th Question. What was his father's name?

Answer. William Ashby.

12th Question. Do you know whether any portion of the original 300 acres patented to William Ashby, was ever taken up under a Maryland grant?

Answer. Yes, sir there was a portion of it taken up.

13th Question. By whom was it taken up and patented?

Answer. By a man by the name of Saucer.

14th Question. Do you know his first name?

Answer. John I think.

15th Question. Do you remember when the State boundary line was run by Lieut. Michler?

Answer. I couldn't say for certain, but I think it was in 1859.

16th Question. I just want to know if you remember about the running?

Answer. Yes, sir. I recollect that well. One circumstance why I recollect it so well—this man that run the line had a brother with him. One was called Colonel Michler, and the other Captain,

2419 and Captain Michler and another man came past our place one Saturday evening, and they were going up here to where this man Bowman lives, and his brother didn't allow any whiskey about him, you know, the Colonel—and his brother had gone to Oakland, and he thought that would be a good time for them to have a kind of a hallaluyah time, when they were gone, and he wanted to know of me if I would go with them, and I stayed all night with them. That is the way I remember it.

17th Question. Now, do you know where that Michler line crosses the Ashby tract?

Answer. Yes, sir, I know where they set stakes. I call them stakes. They called them monuments.

18th Question. Were you along in the fall of 1894, when Julius K. Monroe run a line through the Ashby lands, surveying in this case?

Answer. I was a part of the way, and part of the way I wasn't.

19th Question. Before the time that the Michler line was run, was there a line through the Ashby tract, which was recognized as the Maryland boundary line?

Answer. Yes, sir; that is what I was told. I never seen it run, not until you run it. I had seen pieces of it run.

20th Question. Where was that old Maryland line with reference to the line run by Mr. Monroe?

Answer. Well, it was—some parties claimed it to be where he run, and some claimed it a little this way, and some a little the other way.

21st Question. Who now owns the portion of the Ashby lands, lying west of the Michler line?

Answer. Why, it was deeded to two of my sisters, Mary Arnold and Hester Ashby.

22nd Question. By whom was it deeded to them?

Answer. My father.

23rd Question. Who owns that portion of the Ashby land, that lies between the Michler line, and the old line as it was formerly recognized?

Answer. Why, Thomas L. Ashby, and Eusebius W. Ashby.

24th Question. To what state and county have the taxes been paid on that part of the land lying between the Michler line, and the old line, within your recollection?

2420 Answer. Well, it has been paid in West Virginia, until I guess about two years ago, as near as I can recollect.

25th Question. Since two years ago, where has it been paid?

Answer. Well, you see, when he made them the deed to the land, you know, it wasn't put on record right away, and after it was put on record they couldn't collect taxes under a year, I believe.

26th Question. Which line do you and your brothers now recognize as the state boundary line?

Answer. Why, the Michler line.

27th Question. Is the house you live in situated east of the old line, as formerly claimed?

Answer. Yes, sir.

28th Question. About how far east?

Answer. I don't know about that. It would be a quarter of a mile.

29th Question. Do you know when that Saucer tract of land was taken up?

Answer. No, I couldn't say. I don't know.

30th Question. Was it before the Michler line was run?

Answer. Yes, indeed, long before that. From the idea I have of it, it has been over fifty years since he took it up.

31st Question. Do you know a tract of land on the Maryland side called Maryland, patented to Conrad Nine?

Answer. Yes, sir.

32nd Question. Who owns it now?

Answer. Well, I own 50 acres of it, and J. W. Ashby owns 50. That is what the deed calls for. There is a deed to both of us, jointly you know 100 acres, and then my sister, that is Anna Shaffer, she owns 30. I think there was 130 and a quarter, if I recollect right, in the whole tract.

33rd Question. Did your father ever own that tract?

Answer. Yes.

34th Question. What is recognized as the western boundary of that tract, called Maryland?

2421 Answer. The old state line was always recognized as the boundary on the west side. Some run one place, and some another.

35th Question. Was that near the line as run by Mr. Monroe in 1894?

Answer. Yes, close to it.

And further deponent saith not.

Signature of witness waived by consent of counsel.

Farm of Garrett White, Portland District, Preston County, West Virginia, August 21st, 1896.

Present: George E. Price, attorney for the State of West Virginia.

DORSEY L. ASHBY, a witness produced on behalf of the State of West Virginia, being duly sworn, deposes as follows:

Examination by Mr. PRICE:

1st Question. What is your age?

Answer. Well, sir, I was 40 the 21st day of July.

2nd Question. Where do you live?

Answer. I live between the two lines back here, between the old and new Maryland line.

3rd Question. Do you own the land you live on?

Answer. No, sir.

4th Question. Who does it belong to?

Answer. Benjamin Miller.

5th Question. Where does he live?

Answer. In Maryland.

6th Question. How long have you lived where you now reside?

Answer. Well I think it was three years last April.

7th Question. Do you rent the land from Mr. Miller?

Answer. Yes, sir.

8th Question. Do you know how long Benjamin Miller has owned that piece of land?

2422 Answer. No, sir. I think it was something near 1882 that he bought it. It was my understanding that he bought it

from William G. Brown, Jr. He bought it from one of the Browns at Kingwood.

9th Question. Do you know where the new Maryland line, known as the Michler line, runs with reference to that land?

Answer. Yes, sir.

10th Question. Is it east or west of the house you live in?

Answer. West.

11th Question. About how far west?

Answer. Well, that is hard for me to say. I don't know how wide it is through there, but then you know I suppose the other line is something near 40 or 45 rods, if I would guess at it, I would suppose it is something near that.

12th Question. Were you present when Julius Monroe, surveyor, ran a line through there, in the fall of 1894 in this case?

Answer. Not when they came through by the house, but I saw where they had cut the brush and the stake. They drove a stake there.

13th Question. Is the line run by Mr. Monroe east or west of your house?

Answer. East.

14th Question. About how far east?

Answer. Well, it is about five rods, I should think.

15th Question. Who built the house in which you live?

Answer. Benjamin Miller and William Bowman. He is dead now.

16th Question. When was it built?

Answer. I couldn't say positively, but I think it was in about 1885. To the best of my knowledge about 1885.

17th Question. Who first occupied it?

Answer. Benjamin Miller.

18th Question. Did he occupy it immediately, after it was completed?

Answer. Yes, sir.

19th Question. How long did he remain there?

Answer. I suppose he lived there about four or five years.

20th Question. Who occupied it after Miller left it?

2423 Answer. Well, there was a man by the name of Benjamin McKimmy lived there a month or so.

21st Question. Who succeeded him?

Answer. Wilson Green.

22nd Question. And who succeeded Wilson Green?

Answer. I moved there.

23d Question. Did McKimmy and Green rent from Miller?

Answer. Yes, sir.

24th Question. Do you know where Miller and those who have occupied that property, have claimed the eastern line of the property to be?

Answer. Yes, I know where he claimed it to be, but then he was off about 22 rods. He don't claim it now. He told me about a year ago that he had given that up, but he claims it to be two rods further east than where you men surveyed it.

25th Question. How far east of that had he claimed before Monroe run it?

Answer. Well, to the best of my knowledge, it is between 20 and 22 rods.

26th Question. East of the Monroe line?

Answer. Yes, sir, east of the Monroe line, but he has given that up.

27th Question. Does Miller hold his title under Virginia grants or Maryland?

Answer. Virginia.

28th Question. Do you know in what county and state he has been paying taxes on that land?

Answer. Yes, sir, Preston county, State of West Virginia.

29th Question. Have you any personal knowledge of his paying taxes in Preston county?

Answer. Yes, sir.

30th Question. What do you know about it?

Answer. Well, sir, I paid the taxes for him.

31st Question. Who did you pay them to?

Answer. I paid them to George Geeseman.

32nd Question. What office did he hold?

2424 Answer. Tax collector of Union district, Preston county, West Virginia.

33rd Question. Do you vote in Maryland or West Virginia?

Answer. I vote in Maryland. I am assessed with my personal property, and everything in Maryland, and I am paying taxes in Maryland on my cows and sheep, and the assessors were there not more than a month ago. I have bought sheep in West Virginia, and they have never been in Maryland, and they assessed me with them there sheep in Maryland, and my cows and everything are in Virginia. I own land clear past all the lines in West Virginia, and my stock is there on that, and they assess me with it in Maryland.

34th Question. Who owns the land along the Maryland line south of Miller's land?

Answer. The Preston County Lumber & Coal Company.

35th Question. They adjoin it, do they?

Answer. Yes, sir, they adjoin it.

36th Question. And who owns the land north of Miller's land along the Maryland line?

Answer. Why, Daniel E. Offutt, he owns a strip there, a piece, and then I come in next.

37th Question. On the West Virginia side?

Answer. Offutt, he holds to the new line, just below me.

And further deponent saith not.

Signature of witness waived by stipulation of counsel.

Residence of Garrett T. White, Portland District, Preston County, West Virginia, August 21st, 1896.

Present: George E. Price, attorney for the State of West Virginia.

GARRETT T. WHITE, a witness produced on behalf of the State of West Virginia, being duly sworn, deposes as follows:

Examination by Mr. PRICE:

1st Question. What is your age?

Answer. I am 61, in my 62nd year.

2425 2nd Question. Where do you reside?

Answer. At this place, in Preston county, West Virginia.

3rd Question. Near what town or station on the B. & O. railroad?

Answer. Hutton, Maryland, is where I get my mail, and do all my freight business there.

4th Question. Do you own any land adjoining the Maryland and West Virginia boundary line, near Hutton, Maryland?

Answer. Yes, sir.

5th Question. What quantity of land do you own?

Answer. Well, 180 acres is what I am taxed with, but according to the plats and surveys there is only 175. The man that surveyed it said he could only make 175 out of it.

6th Question. Do you live on the land you have spoken of?

Answer. Yes, sir.

7th Question. How long have you lived there?

Answer. Well, I have lived here since 1858, moved on to the place in April, 1858. That would be 38 years.

8th Question. Do you know where the Michler line, which was run in 1859, passes through your land?

Answer. Yes, sir, I do.

9th Question. Is it east or west of the house in which you live?

Answer. West of the house.

10th Question. About how far?

Answer. Well, it is about 30 rods, I expect, somewhere near.

11th Question. Were you present when Julius Monroe, surveyor in this case, ran the boundary line, in the fall of 1894?

Answer. Yes, sir, I was with him, while he was running through my land here.

12th Question. Is the line that he ran east or west of your house?

Answer. East.

13th Question. About how far?

Answer. Well, I suppose it is about, something over 20 rods, 20 or 21 I think. About nine rods he was from the other, I think.

2426 14th Question. Does your claim of title extend eastward beyond the line as run by Monroe?

Answer It does.

15th Question. About how far?

Answer. Well, eight or nine, somewhere along there. I think it was nine rods at the lower end, if I am not mistaken. I think it

was nine rods there, and wasn't so much quite, up here. There seemed to be a little variation some way.

16th Question. Where have you always claimed and understood the Maryland boundary line to be with reference to your land?

Answer. I always claimed east of the line, what we call the old line. It is a little east of the line run by Mr. Monroe.

17th Question. Is there any fence along the Maryland line, as you claim it?

Answer. Well, part of the way. There is about, I suppose about, probably sixty rods of fence that is claimed to be the line.

18th Question. How long has that fence been there?

Answer. Well, I don't know exactly, but I suppose it has been there—well, it has been there over 40 years, most of it. There is some of it that I made about 33 or 35 years ago, but the most of it has been made over 40 years.

19th Question. Is your land cleared up to the fence?

Answer. Yes, sir, all the way to the fence. It is cleared up to the fence, or cleared and cut off in pasture.

20th Question. Who has the exclusive possession of the land up to the old Maryland line, as you claim it on the West Virginia side, since you have resided on this land?

Answer. I have had it since I resided here, undisputed right to it, and I have never been troubled, any more than just outside talk. It never was anything else.

21st Question. From whom did you derive your title?

Answer. From my father, and from Israel Baldwin. 50 acres was deeded direct from Israel Baldwin to me.

22nd Question. Are those titles derived from the State of Maryland or from the State of West Virginia?

2427 Answer. From the State of West Virginia, or the State of Virginia at the time they were made.

23rd Question. In what state and county have you paid taxes upon this land upon which you live?

Answer. Preston county, Virginia and West Virginia.

24th Question. Have you ever paid taxes on any part of it to the state of Maryland, or the Maryland authorities?

Answer. No, sir, I haven't.

25th Question. Has the state of Maryland or the Maryland authorities ever exercised any jurisdiction of any kind over this land or any part of it?

Answer. They have not. The commissioners told me once, wanted to take a list of my property. I wouldn't give them a list of my property, and they went away, and said they expected they would have to come back, but they never came back. I wrote to the Governor in regard to it, and he wrote me back that if they came, that I should give them a list of my property, but go right away to Kingwood, and get an attorney there, to make out an affidavit, and communicate with him, and he then would communicate with the executive of Maryland, but they never came back, and that was all that was ever done about that.

26th Question. In what county and state have you voted since you lived on this land?

Answer. In Preston county, West Virginia, and Virginia.

27th Question. What lands adjoin your lands on the north on the West Virginia side?

Answer. Well, it is lands, that, when my deed was made here, belonged to Joseph Thomas, and he claimed under a Bacorn title.

28th Question. Who owns those lands now?

Answer. Wesley and William De Berry, I think, and Dennis Glover owns a part of it, adjoining the line, of that land. Wesley owns what is on this side, south of the railroad, and William De Berry owns a piece in there, north of the railroad, and then Denis Glover owns in north of his. It was all under the same title.

2428 29th Question. Is that Bacorn title a Virginia patent or a Maryland?

Answer. It is a Virginia patent, I think. I never saw it, but have heard talk of it, always. I never heard it disputed. It is one of the oldest titles. I heard the surveyor talk about it when I was a little boy, and he mentioned those two titles, George Ashby, and Bacorn title, and one of them was a little bit older than the other, but they were both very old titles, the oldest titles there were in this country, that is, in Virginia.

30th Question. What line do the De Berrys claim as the state boundary line, for their land?

Answer. Why, the old original line, termed the old line.

31st Question. How does that correspond with the line, as you have claimed it?

Answer. Well, about the same line.

32nd Question. It runs to the east of the line, as run by Monroe, does it?

Answer. Yes, sir; still east I think most all the way through. I know that is what Glover told me. It was east of you when I left you at the railroad.

33rd Question. You have stated that you live in a house that stands between the Michler line, and the line run by Monroe. Will you state how long that house has been standing there?

Answer. Well, I think it was built here in the fall of 1847, to the best of my knowledge I think it was 1847.

34th Question. By whom was it built?

Answer. By Henry White, my father.

35th Question. Did your father at that time own this tract of land?

Answer. Yes, sir; he had just bought this land.

36th Question. Has this house been occupied as a residence by the owners of this land ever since it was built?

Answer. Pretty much so. There was a few years there was some tenants here. From 1852 to 1858 there was other tenants here. My sister lived here. My father died in 1852, and then I stayed here a year, and my sister kept house for me. Then she got mar-

2429 ried, and her and her husband was here two years, up to the fall of '55, and that winter, there was a man by the name of Henry Konath lived in it, moved into it, and he was here for a year.

37th Question. Did he rent the place?

Answer. He rented the place of me, and then two years afterward they brought it up to '56, and then I rented it for '57 to a man by the name of Casteele, and then in the spring of '58 I moved on it myself, and have lived here ever since.

38th Question. What distance does this land border on the state line?

Answer. 217 2/5 poles.

39th Question. Who owns the lands on the Maryland side, opposite your lands?

Answer. John A. Connell.

40th Question. How long has he owned them?

Answer. Well, I don't know exactly as I could tell you. It must be some ten or twelve years, probably more, since he has been in possession.

41st Question. Who owned them before him?

Answer. Daniel E. Offutt, and he bought them from Garrett, John W. Garrett, I think. If I remember rightly, there is where Offutt bought them.

42nd Question. To what line does Connell claim, westward?

Answer. Only to what is termed the old line, the line still east of the Monroe line.

43rd Question. Is that the same line to which you claim?

Answer. The same line to which I claim.

44th Question. Has that line been generally recognized in this neighborhood as the state line?

Answer. Ever since I have known it, that is what it has been called, the Maryland and Virginia line.

And further deponent saith not.

Signature of witness waived by stipulation of counsel.

Store of William H. De Berry, Portland District, Corinth, Preston County, West Virginia, August 22nd, 1896.

Present: George E. Price, Attorney for the State of West Virginia.

2430 WILLIAM H. DE BERRY, a witness produced on behalf of the State of West Virginia, having been duly sworn, deposes as follows:

Examination by Mr. PRICE:

1st Question. What is your age?

Answer. I will be 44 the 21st day of February. I was born in 1853.

2nd Question. Where do you reside?

Answer. Here at Corinth, Preston County, West Virginia?

3rd Question. On what railroad, if any, is Corinth situated?

Answer. It is on the B. & O.

4th Question. How far from Hutton Station on the B. & O.?

Answer. I don't know just how far it is. It is I suppose from half to three-quarters of a mile.

5th Question. West?

Answer. Yes, sir. Corinth is west of Hutton.

6th Question. How long have you lived at Corinth?

Answer. Well, I have lived on this place, but after I was married, I moved over on my home place there. I don't know exactly. Since I came from there, it has been three or four years. Since I built this property right here by the side of my store, it is three or four years this fall. Four years this fall, I think.

7th Question. Where is the house on your home place, in which you lived, with reference to Corinth?

Answer. It is over on the main road that runs from Terra Alta to Oakland.

8th Question. How far from Corinth?

Answer. It is about three-quarters of a mile.

9th Question. Is it on the same tract of land?

Answer. The same tract of land that I owned here.

10th Question. Do you own any land adjoining the state boundary line between Maryland and West Virginia, on the West Virginia side?

Answer. I own a tract, besides this tract, we call between the two lines, 17 acres, that adjoins the line, that runs to the corner of the home farm. Then I own 69 acres between what is called the disputed line, the old and new line. The new line is not established.

2431 11th Question. I just simply asked the question, do you own any land that adjoins the Maryland line?

Answer. Yes, sir.

12th Question. How long have you owned it?

Answer. Well, I cannot tell exactly. It is between 15 and 18 years, somewhere along there like that I think to the best of my knowledge. Of course, if I had my deed here, I could tell exactly. 15 and may be 20. No, it is not that long. Somewhere along like that.

13th Question. Of what original tract is the land that you own a part?

Answer. Why, it has always went by the name of Sidney R. Boardman. I don't know who owned it before that, or what tract it was called before that. It was originally I suppose a part of this old Bacorn tract. It was sold from the Sidney R. Boardman tract of land.

14th Question. Is it a part of the old Bacorn survey?

Answer. Why, I think it is. I forget how many acres that covers. I think it was considered a part of that tract.

15th Queston. Did you at any time own land adjoining the said line lying on both sides of the Baltimore & Ohio railroad near Hutton?

Answer. Yes, sir.

16th Question. Do you still own on both sides of the railroad?

Answer. No, sir.

17th Question. Who owns the land lying south of the Baltimore & Ohio railroad, adjoining said line?

Answer. The land that I did own, you mean?

18th Question. Yes.

Answer. Why, Wesley De Barry owns a part of it. I don't think he owns it all, but I think he owns a part of it, at this time.

19th Question. Does your land, as you now own it, run up to the Baltimore & Ohio railroad, on the north side?

Answer. No, sir.

20th Question. Whose land lies between yours on the said line, and the Baltimore and Ohio railroad?

Answer. Why, Robert L. Shank, and Smith, I think his
2432 name is Isaac Smith, I won't be positive, the two parties that comes in there.

21st Question. From whom did Robert Shank derive his title?

Answer. He got it from Gates & Sharps. I won't be positive whether they made it, or the Oakland bank. But they busted up, and he bought it from there. I don't know whether the bank made the title or whether Gates & Sharps made it.

22nd Question. From whom did Gates & Sharp get their title?

Answer. They bought it from me.

23rd Question. That lot then originally belonged to you?

Answer. Yes, sir.

24th Question. About when did you sell it to Gates & Sharps?

Answer. Why, I don't know just how long it has been. It has been something like five or six years. I won't be positive about that.

25th Question. How long had you owned that part of the land before you sold it to Gates & Sharp?

Answer. I was trying to tell you a bit ago, somewhere about 15 or 18 years. I couldn't tell you exactly. I bought it from my father. I couldn't tell you exactly how long.

26th Question. From whom does Smith derive his title?

Answer. I think he bought from Mr. Holmes. I sold to John M. Holmes, and I think he bought from Mr. Holmes.

27th Question. Do you know where the new Michler line is, running through this property?

Answer. No sir. The new Michler line, you say, running through my property?

28th Question. Yes?

Answer. No, sir.

29th Question. You know where the Michler monument is along the railroad, don't you, on the south side of the railroad, the new state line?

Answer. Oh, that is what you call the Michler line, is it? Yes, I know where that is. I didn't know it by that name. I know where this stone is down here, but whether that is on the right ground or not, I don't know, because it did stand up on the
2433 railroad there, and one day a train load of ties coming along there, some stuck out far enough to knock it off, and it rolled

down the bank, and whether it was set on the line there or not, I don't know. I don't know just where the line did cross there, but it is somewhere along there.

30th Question. Were you present, when a line was run through or along your property, by Julius Monroe, surveyor in this case, in the fall of 1894?

Answer. That is, where they ran this last line through here?

31st Question. Yes.

Answer. Why, I wasn't all the way. I was over there. I wasn't only a little while with you fellows over there. Was up about when you were crossing the railroad. I was up there, but I wasn't with you all the way through there, but I seen afterwards where you had went through, and where you put your stakes there.

32nd Question. You know where the line runs?

Answer. I don't on the upper side exactly, but above my house I seen where you had put up a rock pile, and put a stake in it, and I seen on Shank's place where you had run and put some pointers, I supposed you had put down.

33rd Question. Where is the old state boundary line, between Maryland and West Virginia, as you have known and claimed it, since you have lived on this tract of land?

Answer. That is up there, at this fence between Connell and Shank and I. That is where we always claimed to be the old line, and there is where Mr. Connell always claimed, to be the old state line.

34th Question. Is that east or west of the line as run by Mr. Monroe?

Answer. I think, by the way the stakes are set there, that is east of his marks there.

35th Question. About how far east?

Answer. Well, I cannot tell you exactly. I never measured it exactly, but I think though the way I understand it, that close to the railroad, it is a little narrower than what it is the upper end of my place, I think it got off a little farther on the west side of
2434 the line, than at the railroad. I think it is between four and five rods over here on Shank's, I heard some of them say. I never measured it myself.

36th Question. Is the land cleared along that old line on the West Virginia side, as you claim it?

Answer. Yes, well, it is not altogether, in there. Up there is a little piece that has been cut off, and is almost growed up again. You might say it has been cleared, but is not exactly cleared now.

37th Question. Is there a fence along that old line?

Answer. Yes, sir.

38th Question. How long has that old fence been there?

Answer. Indeed, I couldn't tell you. I think, to the best of my knowledge, there was an old fence there, when we moved here.

39th Question. How long since you moved here?

Answer. In March, I think about 33 or 34 years. I was 7 years old when we moved here, and we moved here I think in March, and I will soon be 44. That would be about 37 years, somewhere near that.

40th Question. Who owns the land on the Maryland side, adjoining your land?

Answer. Why, Mr. John Connell. That is, he owns, except at the upper end. I think Kuykendall owns a little on the upper side, on the north-east end of it.

41st Question. Who owned that land before John Connell?

Answer. Indeed, I couldn't tell you. He owned property when we came here, and he is the only man that ever I know that owned it.

42nd Question. Is John Connell still living, or dead?

Answer. He is dead.

43rd Question. When did he die?

Answer. He died this spring some time, I think.

44th Question. Was he an old man?

Answer. Yes, sir.

45th Question. Had he lived on that place adjoining yours on the Maryland side, as long as you can recollect?

Answer. Yes, sir.

2435 46th Question. How far did Connell hold up westward?

Answer. He held up to this old line there, to where I join.

47th Question. Where you claimed it?

Answer. Yes, sir.

48th Question. Who has had the undisputed, uninterrupted possession of the tract of land on which you live, lying west of the old Maryland line, as you claim it, as long as you can recollect?

Answer. Why, Sidney Boardman, and Joseph DeBerry and William H. DeBerry, that is, and these other little tracts that have been taken off since—that belong to Wes DeBerry and Smith and Shank, and then these few lots down here now, that Wes DeBerry sold off. I think he sold to one man by the name of John Freeland, and I think there is another man in there by the name of Felton, and I wont say whether he has sold any more or not.

49th Question. Have those lands been claimed all the time within your recollection, under Virginia or Maryland titles?

Answer. We have always claimed under the Virginia title. Always paid taxes to the old line, and held possession there.

50th Question. Where have you paid your taxes?

Answer. To Virginia.

51st Question. And West Virginia?

Answer. Yes, sir; West Virginia, Preston county.

52nd Question. Have you ever paid any taxes to the Maryland authorities on those lands?

Answer. No, sir.

53rd Question. Has the state of Maryland in any way exercised any jurisdiction west of the old Maryland line, as you have claimed it, within your recollection?

Answer. That is, claimed anything off of me, on my title.

54th Question. Yes.

Answer. No, sir.

55th Question. Whose land adjoins you along the state line, on the north?

Answer. Dennis Glover's.

2436 56th Question. On the West Virginia side?

Answer. Yes, sir; Dennis Glover. That is the tract between the two lines here.

57th Question. From whom did Dennis Glover acquire his title?

Answer. Why, I think it was a fellow by the name of Ed Long, I think is the man he bought it of. I know he owned it, and I think he bought it of Ed Long.

58th Question. Do you know whether Glover claims over to the same old state line you claim to?

Answer. I won't be positive whether his runs to it, or whether over it. I know he owns a part, whether all the way down or not, I wouldn't say. His corners with mine, and runs part of the way straight, but whether it runs all the way through straight, I wouldn't say.

59th Question. He has a corner on the old Maryland line corresponding with your line?

Answer. Yes, sir.

60th Question. And from there the line runs straight, as far as you know it?

Answer. Yes, sir; but I wouldn't say whether it is that way all the way through or not. I cannot say.

61st Question. Is the land owned by Wesley DeBerry along the state line south of the railroad cleared?

Answered. Partly so.

62nd Question. The land on both sides of the railroad is cleared, for a considerable distance back, isn't it?

Answer. Yes, sir. Well, on the lower side there is a part of a glade, you know, on the lower side next to the creek, on the south side of the line there, is a right smart of brush and stuff that is not cleared off, but on this other side it is considered cleared off a considerable piece. It is not cleared right, but it is called cleared land.

63rd Question. The forest is cut away?

Answer. Yes, sir.

2437 64th Question. Has it always been so, in your recollection?

Answer. No, sir. Part of this on this other side, part of it I cleared myself, or had it cleared.

65th Question. How has it been right along the railroad on either side?

Answer. Well, on both sides of the railroad, it has been cleared many years. There was a right smart of timber on both sides of the railroad, a right smart of underbrush too, until the last few years.

66th Question. What business are you in?

Answer. In the store-keeping business, and have a farm, farming some. I hire all my farming done.

67th Question. Have you any ancient deed, relating to or covering the Bacorm title?

Answer. Yes, sir. I had such a deed, and delivered it to Jukius K. Monroe, in the fall of 1894, when he was running this line.

A copy of said deed is filed herewith, as part of this evidence, marked Exhibit No. 3.

68th Question. What is your understanding, as to whether the land owned by Dennis Glover, lying north of you, is embraced within the Bacorn title, or not?

Answer. It is I think. It seemed as though, he said that was something we should keep, this old Bacorn deed. I suppose that his title was in that, or he wouldn't be so interested about it. Of course, I don't know anything in particular whether it is or not.

69th Question. You have lived on this tract of land, since you were 7 years old, I understand you?

Answer. Well, not all the time. I said after I was married I moved over on my home place, and lived there.

70th Question. Isn't that a part of the Bacorn tract?

Answer. Yes, that is a part of this tract. Yes, sir, ever since I was about seven years old, I have lived on this tract.

71st Question. And during all that time your father and
2438 yourself, and those owning these lands *lands* have claimed to the old Maryland line, which is a short distance east of the line, as run by Monroe?

Answer. Yes, sir.

72nd Question. And you have paid taxes in West Virginia and Virginia on those lands all that time?

Answer. Yes, sir.

And further deponent saith not.

Signature of witness waived by stipulation of counsel.

Post-office, Town of Corinth, Preston County, West Virginia, August 22nd, 1896.

Present: George E. Price, Attorney for the State of West Virginia.

WESLEY DEBERRY, a witness produced on behalf of the State of West Virginia, being duly sworn, deposes as follows:

Examination by Mr. PRICE:

1st Question. What is your age?

Answer. 36 years old, the 30th day of November, this fall.

2nd Question. Where do you reside?

Answer. In Corinth is my residence, Corinth, Preston County, West Virginia.

3rd Question. What is your occupation?

Answer. Well, it is farming principally.

4th Question. Do you hold any public office?

Answer. I have the post-office here.

5th Question. Do you own any land adjoining the state line between West Virginia and Maryland, on the West Virginia side?

Answer. Yes, sir.

6th Question. Where is that land located with reference to the Baltimore & Ohio railroad?

Answer. Well, it is adjoining the Baltimore & Ohio railroad, one tract of it.

7th Question. On which side of the railroad is it, north or south?

2439 Answer. On the south side of the railroad.

8th Question. Is it near Hutton station, on the Baltimore & Ohio railroad?

Answer. Yes, sir; it is not far from Hutton station. I don't know just the exact distance.

9th Question. From whom did you acquire your title to that piece of land?

Answer. From Calvin DeBerry.

10th Question. From whom did he acquire his title to it?

Answer. From William H. DeBerry.

11th Question. And from whom did William H. DeBerry acquire his title?

Answer. Joseph DeBerry.

12th Question. His father?

Answer. Yes, sir.

13th Question. What relation are William H. DeBerry and Calvin DeBerry to you?

Answer. They are first cousins.

14th Question. Your father and Joseph DeBerry then were brothers?

Answer. Yes, sir.

15th Question. How long have you lived in this neighborhood?

Answer. Well, I was born in this neighborhood, and I have lived here all of my lifetime I stayed in Terra Alta for a couple of years.

16th Question. Terra Alta is how far from here?

Answer. Four miles and a half.

17th Question. On the Baltimore & Ohio railroad?

Answer. Yes, sir.

18th Question. West?

Answer. Yes, sir. It is generally counted four and a half.

19th Question. Do you know where the Michler monument is, that was planted on what is known as the new Michler Maryland line, along the Baltimore & Ohio railroad?

Answer. I don't know that I know of any monument by that name. I know where there is an old stone planted down here close to the B. & O. road, but I don't know as I ever knew it by that name.

2440 20th Question. By what name do you know it?

Answer. Well, it generally went by the name of the stone on the new Maryland line.

21st Question. Do you know about when it was put there, what years?

Answer. No, sir; I do not believe that I could tell the year that it was put there.

22nd Question. Do you remember when it was put there?

Answer. I really don't remember that, when it was put there.

23rd Question. What is your understanding as to the time about when it was put there?

Answer. Well, sir, I couldn't give you any very definite time about that. I never took so very much account of it.

24th Question. Is that new Maryland line on which that Monument stands, east or west of where you claim and recognize the Maryland line to be?

Answer. It is west.

25th Question. About how far west?

Answer. I suppose something about 60 rods. I do not know the exact distance between them there, but something like that.

26th Question. Has that new Maryland line ever been recognized as the boundary line between the two states, along in this neighborhood?

Answer. No sir, I don't think it ever has, not by the people along here, either by myself, or the people that owned the property here.

27th Question. Do you know where the line is that was run by Julius Monroe the surveyor in this case, in the fall of 1894?

Answer. Not just along that ground, I don't know exactly where it was. I wasn't along when he run there. I was along further over, but I wasn't along when they run through that land there.

28th Question. Do you know where they crossed the railroad?

Answer. No, sir; I don't, never seen that line along there.

29th Question. Where is the state line, as you always claimed and recognized it?

Answer. Well, it lies just east of the property that Freeland lives in there, along that line of fence. That is the line. I hardly

2441 know what words to describe it in.

30th Question. Is there a fence on the line as you have claimed and recognized it?

Answer. Yes, sir.

31st Question. How long has there been a fence there, in your recollection?

Answer. Well, there has been a fence there ever since I can remember. Not the same fence that is there now, but there has been a fence there. I put a new fence there myself about two years ago I believe, but there was an old fence there, that had been there ever since I can remember I believe. It was rotted down so, had to build a new one.

32nd Question. How does that fence correspond with the state line, as claimed by William De Berry, and Shank and White? Is it on the same line as their fence?

Answer. Yes, sir, I think it is on the same line as their fences.

33rd Question. Who has had the exclusive and uninterrupted possession of the land you now claim and own, up to that line on which that fence stands on the West Virginia side, as far as you can recollect?

Answer. Well, it has belonged to the De Berrys, Joseph, William and Calvin De Berry, and Boardman owned it for a while.

34th Question. And yourself?

Answer. Yes, sir; myself.

35th Question. Has that land been held by you, and those under whom you claim, under Virginia or Maryland title?

Answer. Under a Virginia title.

36th Question. In what state and county have you paid taxes on that land?

Answer. In West Virginia and Preston County.

37th Question. Who owns the lands on the Maryland side opposite your land?

Answer. Connell, I believe. I am not sure whether it is in Connell's name, but I think it is Connell though claims there. I believe that he bought from Offutt. I think it is Connell's title.

38th Question. Persons owning that land on the Maryland
2442 side—have they ever had any possession, or exercised any ownership west of the fence on the old line, as you claim it?

Answer. No, sir; I think not.

39th Question. Is that land cleared?

Answer. Yes, sir.

40th Question. How long has it been cleared of the original forest?

Answer. It is not all cleared but the majority of it is cleared. Ever since I can remember.

41st Question. You spoke of a lot owned by a man by the name of Freeland. What is his first name?

Answer. George W. I think. The deed was made to his wife, Sarah J. Freeland, I think.

42nd Question. Where is that lot situated?

Answer. It is on the Maryland line, or it runs with the Maryland line.

43rd Question. And how is it situated with reference to the Baltimore & Ohio Railroad?

Answer. It it adjoining the limits of the Baltimore & Ohio railroad.

44th Question. The south side of the railroad?

Answer. Yes, sir.

45th Question. From whom did Mrs. Freeland get her title to that land?

Answer. From me.

46th Question. When did she get it?

Answer. Now, I don't believe I could give you even the year. About five years ago, I think I made that deed.

47th Question. Is there a dwelling house on that Freeland lot?

Answer. Yes, sir.

48th Question. Who built it?

Answer. Freeland built it.

49th Question. Who lives in it?

Answer. Freeland lives in it.

50th Question. How long have they lived in it?

Answer. Since they built it. I couldn't give just the num-
2443 ber of years. They built soon after they bought from me.

51st Question. That house is between the new Maryland line, on which the monument stands, and the old line, as you have held and claimed it, isn't it?

Answer. Yes, sir.

52nd Question. Is there any other dwelling house south of the railroad, along there?

Answer. Yes, sir.

53rd Question. What other?

Answer. Warren Felton owns a dwelling house in there.

54th Question. Where did he get his lot from?

Answer. Felton and Wilson bought it from me, and then I think Felton bought from Wilson.

55th Question. About when did you make them their deed?

Answer. About three years ago, I think.

56th Question. Has Felton a dwelling on his lot?

Answer. Yes, sir.

57th Question. When did he build it?

Answer. About three years ago, I believe.

58th Question. Who lives in it?

Answer. Warren Felton.

59th Question. Has he lived in it ever since he built it?

Answer. Yes, sir. I built the house and sold it to Wilson and Felton.

60th Question. Is that house between the new Maryland line, on which the monument stands, and the old line, as you have always claimed it?

Answer. Yes, sir.

61st Question. Is there a house just on the north side of the railroad between the new line, and the old line, as claimed along here?

Answer. Yes, sir.

62nd Question. Who owns that house and who lives in it?

Answer. Isaac Smith lives in it.

63rd Question. Does he own it?

Answer. I believe so.

2444 64th Question. Do you know how long that house has been there?

Answer. It has been there three or four years. It was built on the site of an old house? There was another house stood there before that, built a great many years ago.

65th Question. Who owned the house that stood there before this one?

Answer. Boardman owned the house there.

66th Question. Do you know how long that old house had stood there?

Answer. No, sir, I couldn't tell just how long it had stood there.

67th Question. Had it stood there as long as you can recollect—back to your earliest recollection?

Answer. Yes, sir, I should say that I was a small boy.

68th Question. Was it an old or a new house when you first knew it?

Answer. I wouldn't just say about the age of the house, but I think it was built when I was a very small boy there.

69th Question. When Boardman owned this tract of land, in what house did he live?

Answer. He lived in that old house, there.

70th Question. The same place where the Smoth house now is?

Answer. Yes, sir.

71st Question. Who owns the land south of you, along the Maryland line?

Answer. Garrett T. White.

72nd Question. How does the state line as claimed by you correspond with the state line as claimed by Garrett T. White?

Answer. I think it is the same.

73rd Question. The same line?

Answer. I think so.

74th Question. Who owns the land south of Garrett T. White along the line?

Answer. Well, I do I guess.

75th Question. What is that tract called that you own south of Garrett White?

Answer. Known as the Fredlock property now.

76th Question. And that Fredlock property how do you claim as to the state line?

2445 Answer. Well, I believe it is claimed to run to the old Maryland line.

77th Question. The same line extended, that runs through your place here, and through Garrett White's, or east of them?

Answer. Yes, sir. I think it is the same line. I wouldn't be positive about that, either. I hardly know just where Garrett White's line is.

78th Question. Have you sold any other lots off of your tract lying just south of the Baltimore & Ohio railroad, along the West Virginia line, between the new Maryland line, and the old line?

Answer. Yes, sir.

79th Question. Please give the names of the persons to whom you have sold lots along there?

Answer. There is Sarah E. Freeland, and Sarah J. Wilhelm, I believe, I am not positive of my getting those first names just right. E. W. Felton and I. S. Wilson, two to John Carney, six to B. F. White, and one to I. S. Wilson. That is all I believe.

80th Question. Are all those lots located between the new line on which the monument stands, and the old line as you claim it?

Answer. Yes, sir.

81st Question. How are they located with reference to the Baltimore & Ohio railroad?

Answer. They are lying south of the Baltimore & Ohio railroad, and most of them along the line of the Baltimore & Ohio railroad.

82nd Question. On which of these lots, if any, have houses been built, besides the houses of Freeland and Felton?

Answer. There is Philip Freeland, and Wilhelm built a house, and Wilson.

83rd Question. Where is the Wilson lot located?

Answer. It is located near the south-west corner of the tract.

84th Question. Some distance from the railroad?

Answer. Yes, sir.

85th Question. Does he live in his house there?

Answer. Not now. He has moved out. There is no one living in the house, at the present.

2446 86th Question. He did live in it, did he?

Answer. Yes, sir.

87th Question. What distance does this old tract of land just south of the Baltimore & Ohio railroad, extend along the state line?

Answer. I think it is about 60 rods. My land extends from the railroad to Snowy Creek.

88th Question. Do you know whether Freeland and Felton, and the persons living between the two lines of which you have spoken, claim to live in West Virginia or in Maryland?

Answer. They claim to live in West Virginia.

89th Question. Do you know where they vote?

Answer. They vote at Corinth, Preston County, West Virginia.

90th Question. Vote for the officers of Preston county, and for the State officers of West Virginia?

Answer. I suppose. They come to the polls to vote. I couldn't just say what they do vote.

91st Question. Do you know where their lots are assessed, whether in West Virginia or in Maryland?

Answer. In West Virginia. They have their deeds recorded, but I am not real positive, that they ever had their lands transferred, their lots.

And further deponent saith not.

Signature of witness waived by stipulation of counsel.

Residence of Isaac H. Smith, Near Corinth, Preston County, West Virginia, August 22nd, 1896.

Present: George E. Price, Attorney for the State of West Virginia.

ISAAC H. SMITH, a witness produced on behalf of the State of West Virginia, being duly sworn, deposes as follows:

1st Question. What is your age?

2447 Answer. I will be 54 in October, I reckon.

2nd Question. Where do you reside?

Answer. Right here I guess.

3rd Question. You live kind of between Corinth and Hutton, on the Baltimore & Ohio railroad?

Answer. Yes, sir. Born and raised in this county, and lived three or four years at Clellan.

4th Question. What is your occupation?

Answer. I have been several years a blacksmith, pretty near all the time. Have been farming a little this summer.

5th Question. Do you own any land adjoining the state boundary line between Maryland and West Virginia?

Answer. Yes, sir.

6th Question. From whom did you purchase?

Answer. John M. Holmes.

7th Question. When did you buy it?

Answer. Two years ago last spring, I believe. The article is here some place, but I don't know whether I could find that or not. I don't mind just what time. I think it was in March some time.

8th Question. Did you get a deed from Mr. Holmes for the property?

Answer. Yes, sir, from his administrator, executor.

9th Question. Have you that deed here?

Answer. No, it is at Kingwood. I sent it up to be put on record.

10th Question. Do you know from whom Mr. Holmes got this land?

Answer. He got it from William De Berry at Corinth.

11th Question. Do you know where the line was run by Julius Monroe, the surveyor in this case, in the fall of 1894? Did you see the line run through your property?

Answer. Yes, although I don't know just whether I seen them go up through it or not, but I seen them start up through there. I guess I know just about where it is.

2448 12th Question. Do you know where the monument on the new Maryland line is, just on the south of the Baltimore & Ohio railroad?

Answer. Yes, sir.

13th Question. Is that new Maryland line west of your property, or would it run through it?

Answer. No, it won't run through if. It is west of it. West of it 40 or 50 rods, 40 rods I expect or close to it.

14th Question. Have you a dwelling house on your property?

Answer. Yes, sir.

15th Question. When and by whom was it built?

Answer. I built it myself. It was built two years ago last spring—two years this summer, I reckon.

16th Question. Have you lived in that house since you bought it?

Answer. Yes, sir; have lived in it, it will be two years this fall, in October, I believe.

17th Question. Is that house east or west of the line, as run by Monroe in the fall of 1894.

Answer. Well, it is rather north-west of it I guess. Well, pretty near west.

18th Question. About how far west of the Monroe line is the house?

Answer. I don't know. It is between 20 and 25 rods I reckon, suppose it would be about that far. I couldn't say certain.

19th Question. Is the Maryland line, as you claim it, and as it has been recognized along here, east or west of the line as run by Mr. Monroe?

Answer. Well, I believe it is east, as far as I know.

20th Question. About how far east of the Monroe line?

Answer. Well, I don't know. It is between four and five rods, I suppose, where it went through here.

2449 21st Question. Is there a fence along the eastern boundary of your property, along the Maryland line?

Answer. Yes.

22nd Question. How long has that fence been there?

Answer. I couldn't tell you how long it has been there. Been there a number of years though. The fence was there when I bought

and I have known it for 18 or 20 years, and there was still a fence there then.

23rd Question. Is your property cleared up?

Answer. No, it is not cleared yet. It is partly cleared.

24th Question. That fence is four or five rods—runs along four or five rods eastward of the line, as run by Monroe?

Answer. I would suppose it was about that. I never measured it, or anything of the kind, the distance, but I would suppose so.

25th Question. Have you always claimed over to that fence, as your boundary line?

Answer. Yes, sir.

26th Question. Who owns the land on the Maryland side, just east of you?

Answer. I would suppose that the widow Connell. I think she owns that.

27th Question. John Connell's widow?

Answer. Yes, sir. That is what I have always heard, anyhow.

28th Question. Have the Connells or anyone owning that property ever had any possession or control west of that fence, which you claim as your eastern line?

Answer. Not to my knowing they ain't.

29th Question. In what state and county is your land assessed for taxation?

Answer. Well, it is in the State of West Virginia, and Preston County.

30th Question. Have you paid taxes on it, in Preston county, West Virginia?

Answer. No, I ain't myself yet, but I suppose there is a tax receipt against me. DeBerry said he would have it transferred last spring, but I don't know whether he did or not, but Holmes pays taxes in West Virginia, because I have seen his tax receipts a good many times.

31st Question. You hold your land then under a West Virginia title?

2450 Answer. Yes, sir.

32d Question. Where do you claim your citizenship, and where do you vote?

Answer. Well, I vote in West Virginia, I suppose.

33rd Question. Where is the voting place?

Answer. Well, it is here at Corinth I reckon. I never voted in West Virginia yet since I lived in Maryland, was down here at Clellan a little over three years.

34th Question. Was there a house upon this property before you built your present residence?

Answer. Yes, there was an old foundation of a house here. The house was all gone. There was none of that here when I come here I guess it had been burned down or something. The old foundation was here.

35th Question. Do you remember ever having seen that house since it was standing?

Answer. No, I don't.

36th Question. You have only been in this neighborhood, lived here, seven years, seven or eight years?

Answer. Yes.

37th Question. Who owns the property along the state line north of you?

Answer. Mr. Shank I believe owns adjoining me around here, on the upper side.

38th Question. What is his first name?

Answer. I could not tell you that. I have been acquainted with him two or three years too.

39th Question. Is the fence along the state line, as you claim it, a continuous line along you, Shank and the De Berry land, running northward?

Answer. Yes.

40th Question. Your property then lies entirely between the new line on which the monument stands, and the old Maryland line, as you have known it to be claimed since you have been in this neighborhood?

Answer. Yes, sir

And further deponent saith not.

2451 Signature of witness waived by stipulation of counsel.

Residence of George W. Freeland, Near Corinth, Preston County, West Virginia, August 22nd, 1896.

Present: Geo. E. Price, attorney for the State of West Virginia.

GEORGE W. FREELAND, a witness produced on behalf of the State of West Virginia, being duly sworn, deposes as follows:

Examination by Mr. PRICE:

First Question. What is your age?

Answer. 42 years old past.

2nd Question. What is your occupation?

Answer. Carpenter, builder.

3rd Question. Where do you reside?

Answer. In West Virginia, I suppose, according to the old line.

4th Question. Do you own the property in which you live?

Answer. No, sir.

5th Question. To whom does it belong?

Answer. Samuel Freeland.

6th Question. Did you ever own the property?

Answer. Yes, sir; my wife owned it.

7th Question. From whom did your wife get title to the property?

Answer. From De Berry, Wesley De Berry.

8th Question. When did De Berry convey the property to your wife, about how long ago?

Answer. Well, it was five years last winter.

9th Question. Where is that property situated with reference to the Baltimore & Ohio railroad? Does it adjoin the railroad?

Answer. Yes, it adjoins the railroad.

10th Question. Which side of the railroad is it on?

Answer. The south side.

11th Question. State whether it adjoins the old Maryland
2452 line as recognized in this neighborhood or not?

Answer. Yes, it adjoins the old line.

12th Question. Is there a fence on the old Maryland line?

Answer. Well, yes, most of the way. Right here at the house there is not. Just across my lot, there is not any fence.

13th Question. Is there a fence running across the bottom, southward from your house?

Answer. Yes, sir.

14th Question. How long has that fence been there?

Answer. That fence really has only been there about a year, but the old fence was there, has been there ever since I knew the place.

15th Question. How long have you known the place?

Answer. For nine or ten years.

16th Question. Is there a dwelling house on the lot of which you have spoken, which your wife purchased from De Berry?

Answer. Yes, sir.

17th Question. Who built the house on it?

Answer. I built the house.

18th Question. When did you build it?

Answer. I built it four years ago.

19th Question. Who has been living in the house since you built it?

Answer. I have, ever since.

20th Question. When did you and your wife convey the property to Samuel Freeland?

Answer. Three years ago, I might say, it will be this fall.

21st Question. You have continued to occupy the house all the time since you conveyed it to him?

Answer. Yes, sir.

22nd Question. Do you know where the monument is on the new Maryland line, just above you on the Baltimore & Ohio railroad?

Answer. Yes.

23rd Question. Is that west or east of you?

2453 Answer. West.

24th Question. About how far west?

Answer. Well, about 300 yards I suppose. That is about the distance, as near as I could guess.

25th Question. The house and lot then, in which you live is situated between the old Maryland line, and the new line on which that monument stands?

Answer. Yes, sir.

26th Question. Who owns the land just east of you, across the old Maryland line?

Answer. Connell. I suppose it is in John Connell's name. The old gentleman is dead, but it is in his name yet.

27th Question. Has Connell ever had any possession, or exercised any ownership over the lot on which you reside?

Answer. No, sir.

28th Question. Who owns the land just south of your lot, along the state line, the old state line?

Answer. Wesley De Berry, I think, as far as I know. Yes, I am pretty sure he has not sold it.

29th Question. And who owns the lot on the West Virginia side just across the railroad from you, on the state line, north?

Answer. Isaac Smith. I don't know whether he has any title for it or not. He bought it of John M. Holmes.

30th Question. How far does the eastern line of Smith's lot compare with the eastern line of your property, and the fence that runs across the bottom?

Answer. Well, it is on a line clear through, north and south.

31st Question. Has your personal property been assessed for taxation?

Answer. Yes, sir.

32nd Question. In what state and county, has it been assessed?

Answer. In West Virginia, Preston county.

33rd Question. The title then to this property is claimed under a West Virginia title, is it?

Answer. Yes, sir.

2454 34th Question. Which line has been recognized among the people of this neighborhood since you have known it, as the state boundary line, between Maryland and West Virginia?

Answer. Well, the eastern line.

35th Question. The line just east of your house?

Answer. Yes.

36th Question. Do you know where the line was run by Julius K. Monroe, surveyor in this case, in the fall of 1894?

Answer. Yes.

37th Question. Where did that line run with reference to the property upon which you now live?

Answer. It run nearly through the center of the lot.

38th Question. And it ran along west of the old state line?

Answer. Yes, sir.

39th Question. About how far west of the old state line?

Answer. About 90 feet. I have two lots here, and the lots are 80 feet, and it is about 10 feet west of the one lot, which makes it I would guess about 90 feet, as near as I can get at it.

And further deponent saith not.

Signature of witness waived by stipulation of counsel.

Hotel of Mrs. Van Metre, Cranesville, Preston County, West Virgina, August 24th, 1896.

Present: George E. Price, Attorney for the State of West Virginia.

NOTLEY B. BROWNING, a witness produced on behalf of the state of West Virginia, being duly sworn, deposes as follows:

Examination by Mr. PRICE:

1st Question. What is your age?

Answer. I will be 57 in next December.

2nd Question. Where do you reside?

2455 Answer. Cranesville, West Virginia.

3rd Question. What is your occupation?

Answer. Well, at this time, the timber business is my occupation, now.

4th Question. Do you own any land on the West Virginia side, adjoining the boundary line, between the states of Maryland and West Virginia?

Answer. Yes, sir.

5th Question. Of what original tract is your land a part?

Answer. It is the southeastern part of the Banks survey, you may say.

6th Question. Is that the Henry Banks survey of 8000 acres?

Answer. Yes, sir.

7th Question. From whom did you derive title to the portion of the Banks survey which you now own?

Answer. From John Crane's heirs, through Smith Crane, the commissioner.

8th Question. About how long have you owned it?

Answer. I have owned it since—about 2100 acres of it—since 1874, and about 1000 acres more, I bought in 1875.

9th Question. How much do you own altogether now?

Answer. About 2600.

10th Question. In one body?

Answer. Yes, sir.

11th Question. How far does it border upon the state line?

Answer. 710 poles, I guess it is. I think that is right. 710 I think is right, on the old Maryland line.

12th Question. Do you know where the new Michler line runs through your land?

Answer. Yes, sir.

13th Question. Is there any monument or other thing to indicate where that line is?

Answer. Yes, sir.

14th Question. What kind of a monument is it, and where is it?

Answer. It is a stone about four or five feet high, right on the top of what is called Fike's Mountain.

15th Question. Do you know where the line was run by

2456 Julius K. Monroe, surveyor in this case, through your land in the fall of 1894?

Answer. Yes, sir, I know. I seen him run part of it, and I saw where he run the balance.

16th Question. You have spoken of the old Maryland line—is that old Maryland line east or west of where Mr. Monroe run through your land?

Answer. East.

17th Question. About how far east?

Answer. I think it is something close to 80 rods. Close that I know.

18th Question. Is Mr. Monroe's line east or west of the new Michler Maryland line?

Answer. Why, Mr. Monroe's line is east of the Michler line.

19th Question. About how far east?

Answer. Something like, not far from 70 I guess, between 60 and 70, I guess.

20th Question. To which of these lines, the Michler line, the Monroe line, or the old Maryland line, do you hold possession and title?

Answer. To the Deakins line, called the old Maryland line, or known as that anyhow.

21st Question. Are there in Maryland military lots lying opposite your lands?

Answer. Yes, sir.

22nd Question. Do they adjoin your lands on the east?

Answer. Not quite.

23rd Question. What is the distance between your line, and those military lots?

Answer. I never measured the distance of any, but a block of lots that comes in on the north side of the Diadem to strike this line it is 19 rods, from that corner to this Deakins line.

24th Question. Is the old Maryland line, the same as the Eastern boundary of those military lots, as you recognize it?

Answer. No, sir.

25th Question. It is some 19 poles west of the military lots?

2457 Answer. Yes, sir, but some places they run the lots in 16 rods of this line, down further down, but it should be a parallel line.

26th Question. Who owns the strip of land between the military lots and where you claim the line to be?

Answer. Elijah Friends, and a man by the name of Percy. Percy and Friends I guess would cover it.

27th Question. Do they claim that land under a Maryland or Virginia title?

Answer. A Maryland title.

28th Question. Do you claim your land up to that old line altogether under a Virginia, or a Maryland title?

Answer. Virginia title. The taxes have always been paid on it, since it was patented, from what I can learn, in Virginia. I paid my taxes always in Virginia.

29th Question. Your lands are assessed in West Virginia. Preston county, and you pay taxes on that whole body?

Answer. Yes, sir.

30th Question. Who then has had the exclusive, uninterrupted possession of the land along that portion of the Maryland line, west of the old Maryland line, since you have known it?

Answer. Right along the line you mean?

31st Question. Yes.

Answer. As a general thing, Virginia——

32nd Question. I mean your tract?

Answer. Oh, mine. Of course, Virginia, altogether, as far as to this Friend tract.

33rd Question. Have you yourself had possession and claimed up to that old Maryland line, ever since you have owned the land?

Answer. Yes; never been dispossessed of a tree or anything else.

34th Question. Is there any fence along the old Maryland line, bounding upon your land?

Answer. There is 40 rod that I placed there directly after
2458 I bought it, cleared 10 acres, and put a fence of 40 rod on the line.

35th Question. That was shortly after 1874?

Answer. Yes, sir; that was '75 or '76 that was put there.

36th Question. And that fence has remained there from that time to this?

Answer. Yes. I wouldn't be sure about it, but it is something along there, about 1876.

37th Question. Is there any house on your land?

Answer. Yes, there is a farm cleared out there, where I spoke of this fence, a dwelling house and outbuildings.

38th Question. Is that house between the new line, and the old line or not?

Answer. No, sir; that house is just on the west side of the Michler line, a little bit.

39th Question. Is any of the cleared land between the lines?

Answer. Yes, sir; it is cleared all between the Michler and the Deakins lines. I reckon there is not over an acre that is cleared, that is outside of them lines.

40th Question. Did you sell any part of the Banks land to any person along the Maryland line?

Answer. Yes, sir.

41st Question. To whom have you sold parts of the land?

Answer. The first part I sold, I sold to Jonas De Berry for his son-in-law, John A. Reckard, 140 acres.

42nd Question. Where does that 140 acres lie, with reference to the Maryland line?

Answer. It lies right between the two lines, between the Deakins and the Michler line, bounded on both.

43rd Question. Who has possession and claim of title to the tract that you sold to Reckard, now?

Answer. Reckard.

44th Question. Does he live on it?

Answer. Yes, sir.

45th Question. How long has he lived on it?

2459 Answer. Something about 17 or 18 years I think. I cannot just exactly tell. It may be longer than that, too, but it is about there.

46th Question. Do you know whether that Reckard land is assessed in Maryland or West Virginia?

Answer. In West Virginia, and pays the taxes in West Virginia.

47th Question. Do you own any other land in that locality that was patented to any one else, besides the Henry Banks land?

Answer. Yes, sir; I owned the biggest portion of the Carey survey of 500 acres.

48th Question. Do you know to whom that piece of land was patented originally?

Answer. To Frances and William Deakin, by the state of Virginia.

49th Question. What is the date of that patent for that 500 acres to Frances and William Deakins?

Answer. The 9th day of September, 1790.

A certified copy of said patent is filed with this deposition marked Exhibit No. 4.

50th Question. Did you own the whole of that tract of land?

Answer. No, sir; I owned just what laid between the Deakins and Michler lines.

51st Question. From whom did you get it?

Answer. I bought it from John Crane's heirs, through Smith Crane, commissioner for the heirs, who sold is as a commissioner.

52nd Question. How many acres did you have in there, do you remember?

Answer. 487 acres.

53rd Question. Do you still own that land?

Answer. No, sir.

54th Question. To whom did you convey it?

Answer. I sold 110 acres of it to Calvin Fraze. It is owned now by Henry Sines.

55th Question. When did you sell that piece to Calvin Frazee?

Answer. In 1883.

2460 56th Question. Is there any dwelling house upon that piece of land that you sold to Frazee?

Answer. Yes, sir.

57th Question. How is it located with reference to the boundary lines?

Answer. It is some 20 or 30 rods I think, west of the boundary lines, to my recollection. It is not over that I don't think, about 30 rods west of the Deakins line.

58th Question. Between the new Michler line, and the old line?

Answer. Yes, sir.

59th Question. How long has that house been there?

Answer. He built the house immediately after he bought it, right away.

60th Question. And occupied it ever since, as a dwelling house?

Answer. Yes, sir, it has been occupied ever since.

61st Question. Is that piece of land assessed in Maryland or West Virginia?

Answer. In West Virginia.

62nd Question. Did you sell any other part of the land to anybody?

Answer. Then I sold a piece to Samuel Faulkner of eighty some acres, about two years after I sold that. I haven't got his title bond. It was paid for, when he bought it.

63rd Question. Does anybody live on the Faulkner piece?

Answer. Yes, sir; a man by the name of William Sisler. I think William is his name.

64th Question. Does he live on it now?

Answer. Yes, sir, he did a few months ago.

65th Question. Did you sell any other part of that land?

Answer. Yes, sir; I sold the north end of the piece to John H. Friend, the balance of the Carey tract.

66th Question. Do you know where there is located an old Maryland tract called the Elder Spring?

Answer. Yes, sir; I know several lines of the tract. I have never been all around it.

2461 67th Question. These pieces of land that you sold to Friend and Faulkner, did they cover any part of the Elder Spring tract?

Answer. No, sir; I think not. I think the Elder Spring tracts are separate tracts, if I am not mistaken. Annanias Shroyer, first bargained for the Faulkner tract, and he failed in it, some way. It is the Sisler tract now. It has passed through three hands, since I sold it, but Sisler is on it now, and owns it.

68th Question. You sold that 100 acres to Annanias Shroyer, November 10th, 1881, did you not?

Answer. Yes, sir. He did not get the 100 acres, but he bargained for it. It will be all the same.

69th Question. The land then you sold to Friend and Faulkner lies between the Elder Spring tract, and the old Maryland line, does it not?

Answer. Yes, sir. Also between the Michler and the old Maryland line.

70th Question. The persons who purchased from you—do they claim still to hold that land under a West Virginia title, and pay taxes in West Virginia?

Answer. They do, all of them, unless it is Friend. He wanted me to make him a Maryland deed. I have got a patent in Maryland on that as well as in Virginia, took out a Maryland patent on all that land, and he wanted me to make him a Maryland title, and I wouldn't do it, told him it had always been held under Virginia, and it should remain that way. I have both.

71st Question. When did you take out a title in Maryland for that land?

Answer. I took out my warrant in Maryland in 1874, may be '73, '74 anyhow, not later than '74. Crane and me had a kind of a bargain when I bought the land. He advised me to do that, said he didn't think I would have any trouble, but to keep lawsuits and everything off. That is the way I came to do it.

72nd Question. Do you know in which state the persons now living upon those portions of the land, which you have said you sold, vote?

Answer. They vote in West Virginia, everyone of them. I am confident of that. I have been talking to a good many of them. Savage—I never talked to him about the matter, but then I have understood he does. Then I know of their paying their taxes, because I have been bothered a little about it. The sheriff came on to

2462 me a time or two about the taxes. They had just neglected to pay it, and they sent me a note, and I seen about it. They

had old tax receipts, several of them, and just went and paid it. So I know where they are paying their taxes. I don't know so much about Savage, as I know of these other fellows this way.

73rd Question. How long have you lived in the neighborhood of this Henry Banks 8000 acre survey?

Answer. I have lived here over 56 years. At least they tell me I was born around here.

74th Question. Who was your father?

Answer. James Browning.

75th Question. What line has been recognized and accepted, as the state boundary line, by the people in this neighborhood, as long as you recollect it?

Answer. Well, I recollect it always being known and called as the old Maryland, or Deakins line, both. It is recognized, used to be, as the old Maryland line, and a great many people since I have grown up, now call it the Deakins line. It is used by both.

76th Question. How far northward has that old Maryland line been recognized, as you have stated?

Answer. Why, to the Pennsylvania line. That is about 12 miles from here, I guess.

77th Question. How has the line been recognized southward, from the banks title?

Answer. It has always been, so far as I know, with a few exceptions, since the Michler line was run,—there has been a little cross cutting on the southward part of it, but it has always been recognized—I have been up in the wilderness to the West Virginia Central road, and I have been to the Fairfax stone, and they always recognized it principally through there, they told me, the old line. Before the Michler line was run of course they had nothing else to go by. It wasn't a very straight line, I guess. That is the only line they ever knew anything about, and the only line that was recognized I guess as the boundary, until the Michler line was run.

2463 78th Question. I asked you in the earlier part of your examination, /what was the distance between the new Michler line, and the line as run by Mr. Monroe, and also the distance between the Monroe line, and the old Maryland line. Have you refreshed your recollection about that matter?

Answer. Why, from what I understand now, that should be reversed, 70 rods from the Deakins line to Mr. Monroe's, and about 80 from his line to the Michler. I just got it in my head the other way, but now since I think of it, he was a little over half way to the Michler line.

79th Question. Have you examined the preliminary map made by Julius K. Monroe?

Answer. Yes, sir.

80th Question. Will you state whether the Banks 8000 acres, and the William Deakin 500 acres, appear to be correctly located on that map?

Answer. Yes, sir; it seems to be perfectly right, from what I can understand of it anyhow.

Certified copy of a deed from Smith Crane, commissioner, to

Notley B. Browning, dated November 24th, 1875, and recorded in Book No. 42, pages 25 to 27, in the office of the county clerk of Preston county, is filed with this deposition, and marked Exhibit No. 5.

A certified copy of a deed from Smith Crane, commissioner to Notley B. Browning, dated November 24th, 1875, and recorded in Deed Book No. 42, pages 27 to 30, in the office of the county clerk of Preston county, is filed with this deposition, marked Exhibit No. 6.

And further deponent saith not.

Signature of witness waived by stipulation of counsel.

Residence of Michael E. Feather, Near Cranesville, Preston County, West Virginia, August 24th, 1896.

Present: George E. Price, attorney for the State of West Virginia.

MICHAEL E. FEATHER, a witness produced on behalf of the State of West Virginia, being duly sworn, deposes as follows:

Examination by Mr. PRICE:

2464 1st Question. What is your age?

Answer. 49 years old.

2nd Question. And your occupation?

Answer. Farmer.

3rd Question. Where do you reside?

Answer. In Virginia.

4th Question. West Virginia?

Answer. Yes, sir; West Virginia.

5th Question. Near Cranesville, Preston county?

Answer. Yes, sir.

6th Question. Do you own land adjoining the boundary line, between the state of Maryland and West Virginia?

Answer. Yes, sir.

7th Question. What quantity of land do you own?

Answer. Well, that is, you mean up to the line?

8th Question. Well, yes, if you can give it.

Answer. Well, 190 acres, where I claim to own.

9th Question. Do you reside on the land you have spoken of?

Answer. Yes, sir.

10th Question. How long have you lived there?

Answer. Well, I have lived here, it is 30 some years. I just forget the number of years. I could tell though exactly, if I was in the house a little bit. If it is not so particular, it was thirty some years.

11th Question. Do you know about where the new Michler line runs through your land?

Answer. Well, I used to see a stake that stood out there on the other side of that barn. I guess that is the name of that line, and then also there was a stake down the road here a piece that I used to see, that I have been told was the line. I did not see the men run the line, but that is what I have been told.

12th Question. Is that line east or west of your residence?

Answer. It is west.

13th Question. Is it west of your barn?
2465 Answer. Yes, sir.

14th Question. Do you know where Julius K. Monroe, the surveyor in this case, ran a line through your property, in the fall of 1894?

Answer. Yes, sir; I do.

15th Question. Is that line east or west of your residence?

Answer. It is east of my residence here.

16th Question. Your residence, then, is between the Monroe line, and the Michler line?

Answer. Yes, sir.

17th Question. Now, where do you claim, and have always recognized the Maryland boundary line to be?

Answer. Well, I could show you where everybody claims it, if it was in sight. It is right down here near that pine grove.

18th Question. Is that east or west of Mr. Monroe's line.

Answer. It would be east of Mr. Monroe's line.

19th Question. About how far east?

Answer. I don't hardly know the exact distance. It wasn't surveyed, or I never measured the exact distance. I couldn't tell you.

20th Question. It is some considerable distance, is it?

Answer. Yes, considerable distance.

21st Question. Is your land cleared up to that old line, any part of it?

Answer. Yes, part of it is. It is not all cleared up to that line.

22nd Question. When was the house in which you live built?

Answer. Well, now, I forget.

23rd Question. About how many years ago?

Answer. Only three or four years ago. About probably five years ago, I built the house.

24th Question. Was there any house on that land before you built your present residence?

Answer. Yes, sir; there was an old house, a very old one, too.

25th Question. Where did it stand?

Answer. Stood right where that one does. Had to take it
2466 away to put that house there.

26th Question. From whom did you get your title to the land on which you now live?

Answer. I got it from my father, Joseph Feather.

27th Question. Is he still living, and if not, when did he die?

Answer. He died last July.

28th Question. From whom did he get the land?

Answer. He got it of Smith Crane, and the heirs, Crane heirs.

29th Question. Heirs of whom?

Answer. Of John Crane, deceased.

30th Question. The old house that stood on the land before you built your new one—who occupied it, before you came there?

Answer. Well, my brother-in-law was living in the house, before I moved there, Falkenstein.

31st Question. Who lived in it before Falkenstein?

Answer. A man by the name of Lininger.

32nd Question. Did Lininger occupy it as a tenant?

Answer. Yes, sir.

33rd Question. Whose tenant?

Answer. Why, Smith Crane's, the Crane heirs.

34th Question. And who occupied the house before Lininger?

Answer. Why, so far as I know, Crane himself.

35th Question. That is, what Crane?

Answer. That is John Crane, deceased, and family occupied it before this man Lininger moved in, as far as I can tell. That is what I have been told.

36th Question. Had the Cranes lived on this land for a long time?

Answer. Yes, as long as I can remember anything about it. I have been told that they moved there, and there wasn't a stick of timber amiss, and old Mr. Crane cleared all this out here, and he died.

37th Question. How much cleared land have you here, between the new and the old lines?

Answer. Well, I couldn't tell you exactly. It is over 100 acres though of it.

2467 38th Question. Is it good land?

Answer. Yes, it is right good. Some of it is not——

39th Question. In what state and county is this land, up to the old Maryland line, of which you have spoken, assessed for taxation?

Answer. In West Virginia.

40th Question. What county?

Answer. Preston County, West Virginia.

41st Question. Have you and your father been paying taxes on this land, ever since you owned it, in Preston county, West Virginia?

Answer. Yes, sir.

42nd Question. Is there a public road runs through your land?

Answer. Yes, sir.

43rd Question. What direction does it run?

Answer. Well, east and west.

44th Question. Does it run over into the State of Maryland?

Answer. Yes, sir.

45th Question. How far do the West Virginia authorities work that public road?

Answer. They work it down here to the supposed old Maryland line.

46th Question. That is the line you have spoken of as the eastern boundary of the State?

Answer. Yes, sir.

47th Question. Where do you vote?

Answer. I vote in West Virginia. Cranesville is our voting place here.

48th Question. Can you tell about how far your line extends along the old state line?

Answer. Why, I couldn't tell just exactly the distance.

49th Question. Well, is it half a mile, or three-fourths, or a mile, or what would you say?

Answer. Well, I would suppose it is very nearly half a mile across. I will say a half a mile.

50th Question. Do you know where there are any military lots opposite or nearly opposite your land, in Maryland?

2468 Answer. Yes, sir.

51st Question. How does the western boundary of those military lots, correspond with the old Maryland line, as you claim it?

Answer. Well, as near as I know it comes close to it, as far as I have been told. I don't know, only what men have told me, you know, when it comes up something near to them.

52nd Question. Has the new Michler line ever been recognized in any way here as the State boundary line?

Answer. No, sir, not any that I know of.

53rd Question. Does your line connect with any of the military lots, on the Maryland line?

Answer. Yes, sir, it connects, if I am not mistaken, the number—it is not particular about the number is it?

54th Question. If you know it?

Answer. 1402.

55th Question. Who owns that military lot No. 1402 now?

Answer. Israel Frankhauser. Well, he sold it to his son, Marshall Frankhauser.

56th Question. Does Frankhauser, as the owner of that lot, claim to run west of the old Maryland line, as you claim it?

Answer. No, he claims east of that line.

57th Question. Have the Maryland authorities exercised any jurisdiction in any way over any part of the land you claim west of the old Maryland line?

Answer. Well, no, they haven't.

58th Question. Who owns the land north of you, adjoining the Maryland line?

Answer. Ethbell Falkenstein.

59th Question. And who owns the land south of you adjoining the line?

Answer. Well, part Henry Albright, and J. Zalmon Feather, and J. W. Feather, my brother.

60th question. Do Albright and the Feathers you have spoken of claim those lands south of you, under Virginia or Maryland titles?

Answer. Under Virginia titles.

2469 And further deponent saith not.

Signature of witness waived by stipulation of counsel.

Hotel of Mrs. Van Metre, in the Town of Cranesville, Preston County, West Virginia, August 24th, 1896.

Present: George E. Price, Attorney for the State of West Virginia.

J. W. FEATHER, a witness produced on behalf of the State of West Virginia, being duly sworn, deposes as follows:

Examination by Mr. PRICE:

1st Question. What is your age?

Answer. 51.

2nd Question. And your occupation?
Answer. Farmer.
3rd Question. And your place of residence?
Answer. Cranesville, Preston county, West Virginia.
4th Question. What was your father's name?
Answer. Joseph Feather.
5th Question. Are you acquainted with a tract of land formerly owned by your father, Joseph Feather, near the town of Cranesville, Preston county, West Virginia?
Answer. Yes, sir.
6th Question. Do you own any part of that land now?
Answer. Yes, sir.
7th Question. About how much of it?
Answer. Well, I suppose about half of it. It says there 612 acres, and it would be dividing half of it.
8th Question. Does any part of the portion that you own adjoin what is known as the old Maryland line?
Answer. No, sir.
9th Question. Does the new Michler line pass through that
2470 612 acres, belonging to Joseph Feather?
Answer. Yes, sir.
10th Question. You are acquainted with that part of the land that is owned by Michael E. Feather, are you?
Answer. Yes, sir.
11th Question. On which side of the house in which he lives did the new Michler line run, east or west?
Answer. West.
12th Question. Do you know where Julius Monroe, Surveyor in this case, run the line through that property in the fall of 1894?
Answer. Yes, I know where the line went.
13th Question. Is that line east or west of the house in which Michael E. Feather lives?
Answer. That is east.
14th Question. Is the Monroe line east or west of the old Maryland line, as you have known and recognized it?
Answer. It is west of it.
15th Question. About how far west?
Answer. Well, I would hardly know just how far it might be. Well, I would say about 30 rods. It may be a little more than that. You know, just guessing at it, a person can't hit it.
16th Question. Is there a public road runs through that land?
Answer. Yes, sir.
17th Question. Which direction does it run?
Answer. Runs about east and west, very nearly.
18th Question. How far eastward do the West Virginia authorities work that road?
Answer. They work it up to the old line, as we recognize it.
19th Question. How long have you known that old line to be recognized, as the boundary line between the states?
Answer. Why, the first I came to this country was about
2471 1862, or '63 and it was recognized at that time, and from that time on.

20th Question. In what state and county is the land lying west of the old Maryland line assessed for taxation—belonging to that farm?

Answer. Well, it was assessed in Preston county, West Virginia.

21st Question. When did your father, Joseph Feather acquire the title to that piece of land?

Answer. I couldn't tell you just the year. If I had found the deed, I could have done it. It seems to me it was in 1861.

22nd Question. From whom did he get the land?

Answer. Bought it from the Crane heirs.

23rd Question. What Crane?

Answer. John Crane. He made the purchase of Smith Crane.

24th Question. Was there a house on the land at the time your father bought it?

Answer. Yes, sir.

25th Question. Who was living in that house, if anybody?

Answer. Yes, there was a man by the name of Lewis Lininger.

26th Question. Who had lived in it before Lininger?

Answer. I believe you have got me now. Dave Wolf over here did live in it awhile, but I don't know whether he lived in it at that time.

27th Question. Do you know who built that house?

Answer. I was told that John Crane built it.

28th Question. Do you know anything about when it was built?

Answer. No, not to any certainty, when the house was built.

29th Question. What is your best information about that?

Answer. The best would be the date on the wall of the barn. That is 1839.

30th Question. Was the house built before the barn, or afterward?

Answer. Why, it was built before.

31st Question. Did John Crane occupy the house as a dwelling house?

Answer. Yes, sir.

32nd Question. Who lived in it after Lininger?

Answer. Ethbell Falkenstein.

2472 33rd Question. And who succeeded him?

Answer. Why, my brother and myself.

34th Question. Which brother?

Answer. Brother Michael.

35th Question. When did you and your brother move into the house?

Answer. Well, he moved in the spring of 1867, and I in the fall of 1867.

36th Question. How long did you continue to live in that house.

Answer. I don't know that I can just tell the number of years. 12 years or such a matter.

37th Question. Then where did you move to?

Answer. Why, built a house right back here, west of Cranesville on the farm.

38th Question. Did your brother Michael continue to live in the house after you left it?

Answer. Yes, sir.

39th Question. What became of that old house?

Answer. Why my brother Michael tore it down and built a new one in its place.

40th Question. Where did he build the new one with reference to the situation of the old one?

Answer. Right on the same foundation.

41st Question. Is that the house he is now living in?

Answer. Yes, sir.

42nd Question. Now, where is that house situated with reference to the new Maryland line, and the line run by Mr. Monroe?

Answer. It is just about half way between the two.

43rd Question. All the time that you lived in that old house upon that place, what state did you recognize your allegiance and citizenship in?

Answer. The state of West Virginia.

44th Question. What line has always been recognized as the Maryland boundary line, by the occupants, on that farm?

2473 Answer. The old Maryland line, we call it.

45th Question. East of the Monroe line, you say?

Answer. Yes, sir.

46th Question. Does that tract of land connect with any of the military lots on the Maryland side?

Answer. I believe it does. It does not from where it begins, but in the closing up.

47th Question. Who owns the military lot that you think it connects with?

Answer. Marshal Frankhauser.

48th Question. Do you know the number of that lot?

Answer. I believe it was 1404, but I am not sure. It adjoins two lots there, and I am not positive which it is of the two.

49th Question. Do you know who has the deed made by the heirs of John Crane, to your father, Joseph Feather, for that piece of land?

Answer. Well, now, it is in the possession of either Mike or me, and he thinks I have it, and I think he has it. So it is between us.

50th Question. Have you looked to see if you could find it?

Answer. Yes, sir; I have made some search this evening for it.

51st Question. Do you know whether that deed has been re-recorded in the clerk's office, in Preston county, West Virginia, since the court-house was burned?

Answer. Yes, it has been.

52nd Question. Does the new Michler line pass through any portion of the part of the 612 acres that you now own?

Answer. Yes, sir.

53rd Question. In what state and county is your land assessed for taxation?

Answer. Preston county, West Virginia.

54th Question. How much of your land lies east of the new Michler line?

Answer. Well, I don't suppose it would be over ten acres.

55th Question. That part is assessed in Preston county, West Virginia, along with the rest, is it?

Answer. Yes, sir. Upon further reflection, I believe that
2474 the distance from the Monroe line to the old Maryland line is about 60 rods instead of 30. I think that will come nearer it, upon studying it over.

And further deponent saith not.

Signature of witness waived by stipulation of counsel.

Ethbell Falkenstein's Residence, Portland District, Preston County, West Virginia, August 25th, 1896.

Present: George E. Price, attorney for the State of West Virginia.

ETHBELL FALKENSTEIN, a witness produced on behalf of the State of West Virginia, being duly sworn, deposes as follows:

Examination by Mr. PRICE:

1st Question. How old are you?
Answer. I am a little past 61.
3nd Question. Your occupation is farming, I suppose?
Answer. Yes, sir.
3rd Question. Do you own any land lying between the old Maryland line, and the new Maryland line?
Answer. Yes, sir—well, that depends on where the new Maryland line, is of course.
4th Question. I mean the Michler line?
Answer. Yes, what we own. I don't know just what there is of it.
5th Question. From whom did you purchase your land?
Answer. From Smith Crane.
6th Question. Was he representing the heirs of John Crane?
Answer. Yes, sir.
7th Question. Do you live upon that land?
Answer. Yes, sir.
8th Question. How long have you lived on it?
Answer. I cannot tell the exact date now.
9th Question. Well, just approximately?
2475 Answer. I moved here five years after I was married, and I was married in 1861.
10th Question. Have you lived here ever since?
Answer. Yes, sir.
11th Question. Did you build the house in which you live?
Answer. Yes, sir.
12th Question. Do you know where the new Michler line passes through your land?
Answer. Yes, sir.
13th Question. Is it east or west of your residence?
Answer. It is west.
14th Question. About how far west?
Answer. I suppose about 100 rods.
15th Question. Do you know where Julius Monroe, the surveyor in this case, ran the line through your property in the fall of 1894?
Answer. Yes, sir.

16th Question. Did he run ea t or west of your residence?

Answer. He ran east.

17th Question. About how far east?

Answer. I suppose it is about 12 or 14 rods. Something about 14 rods, I reckon.

18th Question. Did the Monroe line run east or west of what was known, as the old Maryland line through the property?

Answer. It runs west of the old Maryland line.

19th Question. About how far west?

Answer. Well, I guess it is about the same distance, about 100 rod-, as near as I could guess at it, you know. Of course, it is guess work with me.

20th Question. Who owns the land adjoining you on the east?

Answer. John E. Otto.

21st Question. From whom did he get his title?

Answer. Got it from Crane's heirs. He bought of the old man himself. That is the way that is.

2476 22nd Question. Is there a public road running through your farm?

Answer. Yes, sir.

23rd Question. Which direction does it run through the place, east and west, or north and south?

Answer. It runs north and south.

24th Question. Does it run east or west of your residence?

Answer. It runs east.

25th Question. Is that road worked by the Maryland or West Virginia authorities?

Answer. I might say by both, because we have always worked it ever since I have lived here.

26th Question. Was that road worked by the road supervisors, or supervisors of Maryland?

Answer. No, it has never been worked by the supervisors.

27th Question. Was it worked by the road supervisors, or under their direction, of West Virginia?

Answer. Yes, sir.

28th Question. Whose land adjoins you on the north?

Answer. The old Banks survey. That belongs I reckon to Browning yet.

29th Question. And who owns the land adjoining you on the south?

Answer. J. W. and M. E. Feather. Well, now, right here it might be necessary to correct. One of my boys, Charlie Falkenstein has settled here, and bought from J. W. Feather 2½ acres, and from M. E. Feather 10 acres, but he has not got a deed for it yet. And also, there is another one of the boys George settled over here. He runs clear through. That has not been attended to.

30th Question. Does your eastern boundary extend over to what is known as the old Maryland line?

Answer. It crosses the Maryland line, 14 rods this side of the corner.

31st Question. Does your eastern boundary correspond all the way with the old Maryland line?

Answer. No, sir.

32nd Question. Crosses it at the northern or southern end?

Answer. Northern corner, near the Banks survey.

2477 33rd Question. Then on the southern side, does it extend over to the old Maryland line?

Answer. No, sir.

34th Question. Did you have your deed for this land recorded in Preston County, West Virginia?

Answer. Yes, sir; before the burning of the court-house.

35th Question. Did you also have it recorded in Maryland?

Answer. Had it recorded in Cumberland, Allegany county.

And further this deponent saith not.

Signature of witness waived by stipulation of counsel.

Hotel of Mrs. Van Metre, Cranesville, Preston County, West Virginia, August 26th, 1896.

Present: George E. Price, Attorney for the State of West Virginia.

J. Z. FEATHER, a witness produced on behalf of the State of West Virginia, being duly sworn, deposes as follows:

Examination by Mr. PRICE:

1st Question. What is your age?

Answer. Well, sir, I am 59, in my 60th year.

2nd Question. And your occupation is farmer, I suppose?

Answer. Yes, sir, always has been.

3rd Question. And you reside near Cranesville, Preston county, West Virginia?

Answer. Yes, sir.

4th Question. Do you own a farm, or piece of land near Cranesville, Preston county, West Virginia?

Answer. Yes, sir; that is what they say I do.

5th Question. From whom did you purchase that piece of land?

Answer. From Phillip Dennis.

6th Question. When did you purchase it?

2478 Answer. In 1868, that is—well, I bought it in the fall of 1867 you know, but I guess I didn't get my deed until the next spring.

7th Question. Do you live on that piece of land?

Answer. Yes, sir.

8th Question. How long have you lived there?

Answer. Well, since 1868. Moved there in April, 1868.

9th Question. Who lived there before you went there?

Answer. Dennis.

10th Question. And who lived there before him, if you know?

Answer. Well, I suppose Edmund Kelly.

11th Question. Did Dennis buy the land from Kelly?

Answer. No, sir, I think Hauger, if I understand it right—Dennis bought it from Hauger—I don't know. He come in about it, some way or other.

12th Question. Do you know who conveyed this land to William Hauger?

Answer. That I couldn't tell you, only just what the deed says there. Well, it was John Crane's heirs.

13th Question. Have you the deed that was made by John Crane's heirs to William Hauger?

Answer. Yes, sir.

Said deed is herewith produced, and is dated the 31st of July, 1861, and recorded originally in the county clerk's office of Preston county, in deed book No. 16, page 366, and re-recorded in said office in book No. 47, on page 227, a certified copy of which deed is to be filed with this deposition, marked Exhibit No. 7.

14th Question. Have you the deed that was made to you for this land by Phillip Dennis?

Answer. Yes, sir.

15th Question. Did he convey the whole of the land to you by that deed?

Answer. No, sir.

16th Question. Only conveys six-ninths?

Answer. Six-ninths.

17th Question. You afterward acquired the other interests from the other heirs, did you?

2479 Answer. Yes, sir.

Said deed is herewith produced, and is dated April 1st, 1868, and was originally recorded in the county clerk's office of Preston county, in deed book No. 24, page 135, and recorded anew in book No. 31, page 173, a certified copy of which deed — to be filed with this deposition, marked Exhibit No. 8.

18th Question. Do you know where the new Michler boundary line, between Maryland and West Virginia passes through your tract of land?

Answer. Well, that I cannot tell.

19th Question. I just want to know if you know about where it is?

Answer. Yes, sir.

20th Question. About how far does your land extend beyond the new Michler line, eastward?

Answer. That, I cannot say. I studied about it this morning. I couldn't fix up an idea, you know. It is such a wilderness, I never get down in there. I did make it one time, to get to the beginning corner, and it was as far as I wanted to go.

21st Question. Does your line extend eastward beyond the new Michler line?

Answer. Yes, sir.

22nd Question. Do you know about where the western line of the military lots opposite to you is?

Answer. No, sir; I do not.

23rd Question. Does your line extend a short distance, or a considerable distance eastward of the Michler line?

Answer. Well, it is not a great distance, I don't think.

24th Question. In what state and county, is your land assessed for taxation?

Answer. In West Virginia, Preston county, I pay taxes for the whole amount.

25th Question. The whole 280 acres is assessed in Preston county, West Virginia, is it?

Answer. Yes, sir.

26th Question. Whose land adjoins you on the north.

Answer. Wesley and Michael Feathers on the north.

27th Question. And whose land lies south of you?

2480 Answer. Well, it is what we call the old original tract, I suppose Wolf & Hartman now. Since I have been here, it goes by the name of the Fitchmer tract.

28th Question. Have you looked at the preliminary map made by Julius Monroe in this case?

Answer. Yes, sir; I have looked at it.

29th Question. State whether your tract of 280 acres appears to be correctly laid down on that map?

Answer. Yes, sir; it does.

30th Question. Have you a map of that tract?

Answer. Yes, sir; I have a plat of it.

31st Question. Do you know what line has been recognized and claimed by the people in this neighborhood as the State boundary line between Maryland and West Virginia.

Answer. Well, they all appear like they claim to what we call the old boundary line.

32d Question. Is the Michler line recognized and claimed generally through here?

Answer. That is the new line? No, of course, in West Virginia. Well, Mike Feathers you know claims in West Virginia, and Falkenstein in Maryland.

33rd Question. Have you recognized and accepted the new Michler line, as the state boundary line?

Answer. No, sir.

34th Question. You claim that all your land lies in West Virginia?

Answer. Yes, sir. That is what I claim. I ought to of course. I pay taxes for it here in this state.

35th Question. You have your title recorded in Preston county, West Virginia?

Answer. Yes, sir.

And further this deponent saith not.

Signature of witness waived by stipulation of counsel.

2481 Residence of Amanda J. Reckard, Pleasant District, Preston County, West Virginia, August 26th, 1896.

Present: George E. Price, attorney for the State of West Virginia.

Mrs. AMANDA J. RECKARD, a witness produced on behalf of the State of West Virginia, being duly sworn, deposes as follows:

Examination by Mr. PRICE:

1st Question. You are the wife of John A. Reckard, are you?
Answer. Yes, sir.
2nd Question. Who was your father?
Answer. Jonas De Berry.
3rd Question. Does John A. Reckard live on a piece of land, lying between the old Maryland and the new Maryland lines?
Answer. That is what they say.
4th Question. Have you the deed that was made to your husband for that piece of land?
Answer. Yes, sir.

Deed herewith produced, dated December 17th, 1880, from Jonas De Berry and wife to John A. Reckard, recorded in the office of the clerk of the county court of Preston county, in Deed Book No. 53, page 16, a certified copy of which is to be filed with this deposition, marked Exhibit No. 9.

5th Question. How long have you lived upon this piece of land?
Answer. I would say 20 years. It may not be quite 20, but it is not far from it.
6th Question. Did your husband build the house in which you now live?
Answer. Yes, sir.
7th Question. Have you lived in the house ever since it was built?
Answer. Yes, sir.
8th Question. Do you know where the old Maryland line is claimed to run along by this line.
Answer. Yes, sir.
9th Question. Is that line east or west of your residence, the old line?

2482 Answer. I hardly know how it runs.

10th Question. Is it on the east side of your house, or the west side?
Answer. Yes, sir; on the east side.
11th Question. Do you know where Julius Monroe, the surveyor in this case, run the line through your land in the fall of 1894?
Answer. Yes, sir.
12th Question. Did that line run east or west of your house?
Answer. That would be west, I would think. I suppose he come in kind of east.
13th Question. I mean, whether it ran along the west side of the house or not?
Answer. Yes, sir.
14th Question. Do you know where the new Michler line is said

to run, along your land? I mean, what was known as the new Maryland line, that was run before the line was run by Mr. Monroe, sometimes called the Michler line?

Answer. I don't know anything about that.

15th Question. Do you know whether the western boundary of your land, is considered to be what is called the new Maryland line, or not?

Answer. No, sir; I don't know.

16th Question. Do you know where this piece of land on which you live is assessed for taxes, whether in West Virginia, or in Maryland?

Answer. It is in West Virginia.

17th Question. Does your husband pay taxes to the authorities of Preston county, West Virginia?

Answer. Yes, sir.

18th Question. Where does your husband vote?

Answer. West Virginia.

19th Question. Where is his voting place?

Answer. Why, I think out here at what they call the Chidester school-house, is where they always go to vote. I think that is the place.

20th Question. That is in Preston county, West Virginia?

Answer. Yes, sir.

2483 21st Question. Where do your children go to school?

Answer. West Virginia.

22nd Question. Your husband considers himself a citizen of West Virginia, does he, and not a citizen of Maryland?

Answer. Well, he would like to of course.

23rd Question. Do you know how much land you have here?

Answer. 140 acres.

24th Question. The one deed is for 100 acres. Where did you get the 40 acres from?

Answer. We got it from Jonas De Berry.

25th Question. Whose land adjoins you on the north?

Answer. Why, Calvin Frazee's did adjoin. Polk Sines owns it now.

26th Question. Whose land adjoins you on the south?

Answer. Mr. Browning's, I reckon.

27th Question. That is, N. B. Browning?

Answer. Yes, sir; and Sisler I reckon too.

And further this deponent saith not.

Signature of witness waived by stipulation of counsel.

Residence of Mrs. Sarah Ann Teets, Grant District, Preston County, West Virginia, August 26th, 1896.

Present: George E. Price, attorney for the State of West Virginia.

SARAH ANN TEETS, a witness produced on behalf of the state of West Virginia, being duly sworn, deposes as follows:

Examination by Mr. PRICE:

1st Question. You are the widow of George W. Teets?
Answer. Yes, sir.
2nd Question. When did your husband die?
Answer. Last November, sometime.
3rd Question. What is your age?
Answer. My age is 69 years the 25th of June.
4th Question. Where did your husband live at the time of his death.
2484 Answer. Here, at home.
5th Question. Did your husband own the land on which he lived at the time of his death?
Answer. Oh, yes, we have owned it, I don't know how many years.
6th Question. From whom did he get this tract of land on which his residence is?
Answer. Andrew Teet-, his father.
7th Question. This is the deed from Andrew Teets, to George W. Teets?
Answer. Yes, sir.

Witness here produced a deed from Andrew Teets and Catherine Teets, his wife, to George W. Teets, dated June 26th, 1869, and recorded in the office of the clerk of the county *clerk* of Preston county, in Deed Book No. 32, page 441, which deed was made in lieu of a former deed, which was burned in the court-house of Preston county, March 7th, 1869. A certified copy of said deed is filed with this deposition marked Exhibit No. 10.

8th Question. How long had you and your husband lived on this piece of land?
Answer. Ever since we have been married. I don't know how long it is since we have been married, but we have been here ever since we were married, and we haven't moved yet.
9th Question. Were you married before the war?
Answer. Yes, sir; and we had a son in the army. He was 18 years old, when he went to the army.
10th Question. Do you know where the old Maryland line is with reference to this place?
Answer. Yes, sir. This line down here is all we know about it.
11th Question. Has that always been regarded as the Maryland line?
Answer. All the time, yes, sir.
12th Question. Is that line east or west of your house?
Answer. It is east.

13th Question. Is it a considerable distance east? Have you any idea?

Answer. No, I haven't. It is down here a little piece. It is not far.

2485 14th Question. Is there a fence along the line?

Answer. Yes, sir; and always has been a fence there, ever since we owned it, and before.

15th Question. Was George W. Teets the son of Andrew Teets?

Answer. Yes, sir, and he was a brother of Lewis Teets.

16th Question. Do you know how long Andrew Teets had owned this land before he deeded it to your husband?

Answer. No, sir; I don't.

17th Question. Do you know where Julius Monroe, the surveyor run his line through this property last fall a year ago?

Answer. Yes, sir; right along up here in our field.

18th Question. Was that east or west of your house?

Answer. It was west.

19th Question. So your house stands between the old Maryland line, and the line Julius Monroe ran?

Answer. Yes, sir

20th Question. Do you remember the Maryland line that was run through your property just before the war, the new Maryland line?

Answer. Yes, sir

21st Question. Is that line east or west of your house?

Answer. West.

22nd Question. In the other line west of the line that Mr. Monroe ran, further west?

Answer. Yes, sir.

23rd Question. This tract of eighty acres of land—in what county and state has it always been assessed for taxes?

Answer. Preston County, West Virginia.

24th Question. In what state and county did your husband George W. Teets, vote during his lifetime?

Answer. In West Virginia, here, Preston County.

25th Question. Your husband, George W. Teets, also owned a piece of land containing about 31½ acres, besides the eighty acres, didn't he?

2486 Answer. Yes sir.

26th Question. Whom did he buy that from?

Answer. Witness herewith produces a deed from Wm. McKee and wife to George Teets, dated March 6th, 1876, and recorded in the office of the county clerk of Preston county, in deed book No. 42, page 223, a certified copy of which is to be filed with this deposition, marked Exhibit No. 11.

27th Question. That 31 acres of land is also in Preston county, West Virginia?

Answer. Yes, sir.

28 Q. And is there assessed for taxes?

Answer. Oh, yes, we pay taxes for it all.

29th Question. Has any of this 80 or this 31 acres ever been assessed for taxes in the State of Maryland?

Answer. No, sir, Pay taxes in one place is at a time enough.

And further deponent saith not.

Signature of witness waived by stipulation of counsel.

WILLIAM A. TEETS, a witness produced, at the same time and place, on behalf of the state of West Virginia, being duly sworn, deposes as follows:

Examination by Mr. PRICE:

1st Question. How old are you?
Answer. 39 the 2nd day of last February.
2nd Question. Are you a son of George W. Teets and Sarah Ann Teets, who just testified?
Answer. Yes, sir.
3rd Question. Where were you born?
Answer. Here on the place.
4th Question. Have you always lived here?
Answer. Yes, sir.
5th Question. What is recognized as the boundary line between the state of Maryland and the state of West Virginia here?
2487 Which do you claim is the boundary line?
Answer. This one down here is the one I always knew as the line.
6th Question. That line is east or west of the house?
Answer. East.
7th Question. About how far east?
Answer. Two or three hundred yards.
8th Question. Is there a fence on that line?
Answer. Yes, sir.
9th Question. How long has there been a fence there?
Answer. Ever since I knew anything about it.
10th Question. Do you know where Julius Monroe, the surveyor in this case ran his line in 1894?
Answer. Yes, sir.
11th Question. Is that line east or west of the house?
Answer. West.
12th Question. About how far west?
Answer. About a couple of hundred yards I suppose, may be more.
13th Question. Do you know where what is called the new Maryland line is?
Answer. I don't just exactly know but pretty near.
14th Question. Is that east or west of the Monroe line?
Answer. It is west.
15th Question. Do you know who built this house, in which you now live?
Answer. Yes, sir; my father built it.
16th Question. Had there been any house here before he built this one?
Answer. Yes, sir.
17th Question. Who built the house that was here before this one?

Answer. My father, I reckon. I didn't know anything about that. He said he built it anyhow.

18th Question. What county and state did your father and your brothers vote in while you lived on this place?

Answer. West Virginia, Preston county.

19th Question. In what county and state is this land assessed for taxation?

Answer. Preston county, West Virginia.

2488 20th Question. Has your father and you all since his death, paid taxes in Preston county, West Virginia?

Answer. Yes, sir; we have.

21st Question. Did Andrew Teets own any other land adjoining this land?

Answer. Yes, sir.

22nd Question. Who did he convey that to?

Answer. Why, traded it to Jeremiah Hayes.

23rd Question. Does Hayes still own it?

Answer. No, sir, Joshua and Sylvanus Fike.

24th Question. Did they get it from Hayes?

Answer. No; they got it from John Taylor.

25th Question. Who did Taylor get it from?

Answer. Alex. Thomas.

26th Question. And who did Thomas get it from?

Answer. Samuel Lininger.

27th Question. Who did Lininger get it from?

Answer. He got it from Jerry Hayes.

28th Question. Is John Taylor related to you in any way?

Answer. He is an uncle of mine. He married father's sister.

29th Question. Where does that land lie with reference to this land? Is it north or south?

Answer. Yes, it is north of it. It is rather north-west.

30th Question. Who owns the land south of you along the Maryland line, on the West Virginia side?

Answer. Marshal Friend, he adjoins us.

31st Question. Does this 80 acres border on the state line?

Answer. Yes, sir.

32nd Question. The eastern boundary then of the 80 acres is regarded and recognized by you, as the state line?

Answer. Yes, sir.

33rd Question. And has always been so?

Answer. Yes, sir; ever since I knew anything about it.

2489 34th Question. About how much land did your grandfather Andrew Teets own here in a body?

Answer. About 231 acres.

35th Question. Who do you understand that he got it from?

Answer. Old Jess Spurgeon. He is dead long ago.

And further deponent saith not.

Signature of witness waived by stipulation of counsel.

Residence of Marshal Friend, Grant District, Preston County, West Virginia, August 26th, 1896.

Present: George E. Price, attorney for the state of West Virginia.

HENRY P. SINES, a witness produced on behalf of the State of West Virginia, being duly sworn, deposes as follows:

Examination by Mr. PRICE:

1st Question. What is your age?
Answer. I will be 53 years old the 16th of December.
2nd Question. Do you own a piece of land along the Maryland and West Virginia line?
Answer. Yes, sir.
3rd Question. How much do you own?
Answer. 110 acres in that tract, more or less, said to be.
4th Question. From whom did you buy it?
Answer. I bought from Mrs. Frazee.
5th Question. Mary Frazee?
Answer. Mary Frazee.
6th Question. That is the deed made from Mary Frazee to you, for that piece of land is it?
Answer. Yes, sir.

Witness herewith produces deed from Mary Frazee, to Henry P. Sines, dated December 15th, 1890, and recorded in the office of the clerk of the county court of Preston county, in deed book No. 69, page 491, a certified copy of which is filed with this deposi-
2490 tion, marked Exhibit No. 12. Witness also produces deed from N. B. Browning, and Susan C. Browning, his wife, to Mary Frazee, dated December 13th, 1884, and recorded in said clerk's office, in deed Book No. 59, page 385, for the same tract of land.

7th Question. Where do you live?
Answer. I live on this disputed land.
8th Question. On this tract of land, conveyed by these deeds?
Answer. Yes, sir.
9th Question. How long have you lived there?
Answer. I have lived there six years this fall.
10th Question. Who built the house on that land in which you live?
Answer. Frazees.
11th Question. Do you know when they built it?
Answer. No, I don't. They built it about five years or six before I got it, I think.
12th Question. Who lived in it before you did?
Answer. Frazees.
13th Question. Had they lived in it from the time they built the house, until you got the land?
Answer. Yes, sir.
14th Question. On which side of your house is the old Maryland line?
Answer. On the east side from what they say.

15th Question. About how far from the house?

Answer. It is about 15 rods I think.

16th Question. And where is the new Maryland line?

Answer. It is on the west side.

17th Question. About how far from the house?

Answer. I couldn't tell just exactly. I reckon though, it is 60 rods. That is, the last line they run.

18th Question. Do you know where the line is that was run by Mr. Monroe, the surveyor in this case, last fall a year, ago?

Answer. Yes, sir.

19th Question. Is that east or west of your house?

2491 Answer. West.

20th Question. In which state and county is your 110 acres assessed for taxes?

Answer. Preston county, West Virginia.

21st Question. In giving the distances of the lines from your house, do you profess to be correct, or are you simply guessing at it?

Answer. I was meaning, trying to get it as near right as I could.

22nd Question. You have never measured it?

Answer. No, sir. I just had to guess from the old line up to about where the house is. That is what I was guessing at the 15 rods, and then from the house up to the line where he run there last fall a year, I suppose it was 20 rods.

And further this deponent saith not.

Signature of witness waived by stipulation of counsel.

Whereupon came WILLIAM SISLER, at the same time and place, a witness produced on behalf of the State of West Virginia, who, being duly sworn, deposes and says:

Examination by Mr. PRICE:

1st Question. What is your age?

Answer. I will be about 33 I guess, in a year.

2nd Question. Do you own any land along the state line between Maryland and West Virginia?

Answer. I own a piece in there, when I get it paid for, between the two lines, just the same as his.

3rd Question. From whom did you buy it?

Answer. I bought it of Jeff Frazee.

4th Question. When did you buy?

Answer. Why, it has been six years ago this fall.

5th Question. Do you know from whom Mr. Frazee got his title to it?

Answer. From Mr. Faulkner.

6th Question. Where did Mr. Faulkner get his title?

Answer. He got it from Mr. Friend, as near as I can tell.

2492 7th Question. And from whom did Friend get it?

Answer. Mr. Shroyer.

8th Question. And Shroyer got it from whom?

Answer. Mr. Notley Browning.

9th Question. Is there a house on that piece of land?
Answer. Yes, sir.
10th Question. Do you live on it?
Answer. Yes, sir; I live on it.
11th Question. Who built the house?
Answer. Mr. Frazee put the hull up. I had to lay the floors and finish it.
10th Question. Have you lived in it since you have owned it?
Answer. Yes, sir.
11th Question. Have you got the deed for it?
Answer. No, sir; I haven't got the deed yet.
12th Question. You have simply got a contract for it?
Answer. Yes, sir.
13th Question. Is that land assessed for taxes?
Answer. Yes, sir; it is assessed.
14th Question. In what state and county is it assessed?
Answer. In West Virginia, Preston county.
15th Question. Where is the old Maryland line with reference to that land?
Answer. Well, it is the east side of me.
16th Question. The east side of the land?
Answer. Yes, sir.
17th Question. And where is what is called the new Maryland line?
Answer. Why, it is the west side of me.
18th Question. That is, the land lies entirely between the old and the new lines?
Answer. Yes, sir; it lays between.
19th Question. Do you know where Mr. Monroe, the surveyor in this case, ran his line through your land?
Answer. Yes, sir; I do.
2493 20th Question. About where did it go?
Answer. Well, it went through pretty near the middle of it.
21st Question. Did it go east or west of your house?
Answer. Why, it went west.
22nd Question. About how far west?
Answer. Well, it went about I expect 20 rods or a little over. I never measured it in particular, but I suppose it is about that.

And further deponent saith not.

Signature of witness waived by stipulation of counse-.

Whereupon came ALBERT J. A. SAVAGE, at the same time and place, a witness on behalf of the State of West Virginia, who, being duly sworn, deposes as follows:

Examination by Mr. PRICE:

1st Question. How old are you?
Answer. 30, I guess.
2nd Question. Where do you live?

Answer. I live between these two lines, in West Virginia.

3rd Question. Who owns the land on which you live?

Answer. Ezra Savage.

4th Question. What relation is he to you?

Answer. My father.

5th Question. You live with your father, then, on the land?

Answer. Yes, sir.

6th Question. How much land does your father own in there?

Answer. It is about 118 acres, I think.

7th Question. From whom did he buy it?

Answer. John H. Friend.

8th Question. Has he a deed for it?

Answer. Yes, sir.

2494 9th Question. Is his deed now in his possession?

Answer. No, sir, it is at Kingwood.

10th Question. What is it doing at Kingwood?

Answer. He sent it up there last summer to be recorded, about a year ago, or such a matter.

11th Question. From whom did John H. Friend buy that land?

Answer. He bought it from Notley Browning.

12th Question. Who built the house in which your father lives on that land?

Answer. Well, I built the house, me and my brother together. I built the principal part of it.

13th Question. When was it built?

Answer. It was built about nine years ago.

14th Question. Has your father and you lived in this house since it was built?

Answer. My father has.

15th Question. Where is the old Maryland line with reference to your lands, your father's land?

Answer. East of there.

16th Question. Did it constitute the eastern boundary of the land?

Answer. Yes, sir.

17th Question. And where is the new or Michler line?

Answer. West.

18th Question. Is that the western boundary?

Answer. Yes, sir.

20th Question. Do you know where the line was run through there by Julius K. Monroe, surveyor in this cause, in the fall of 1894?

Answer. Yes, sir.

21st Question. About where did it run?

Answer. Well, it run about five rods, between five and six, west of the house.

22nd Question. In what state and county is that land assessed for taxes?

Answer. West Virginia, Preston county.

2495 23rd Question. Has it always been assessed that way, so far as you know?

Answer. Yes, sir, so far as I know, it has.

24th Question. Where is your father now?

Answer. He is at home I suppose. Was when I left.

25th Question. He is a right old man, is he?

Answer. Yes, sir; he is not able to go about.

26th Question. He was not able to come over here?

Answer. No, sir. He has been sick for some time, the last year, more or less.

And further this deponent saith not.

Signature of witness waived by stipulation of counsel.

Whereupon came MELVILLE G. FRIEND, at the same time and place, a witness on behalf of the State of West Virginia, who, being duly sworn, deposed as follows:

Examination by Mr. PRICE:

1st Question. How old are you, Mr. Friend?

Answer. 29, I guess. Not quite 30. 29 or 30.

2nd Question. Do you own any land adjoining the boundary line between Maryland and West Virginia?

Answer. It don't neither one. It runs over the lower one, and it don't reach up to the other one. It runs down to the lots, that is a little over, and it don't reach up to the Michler line, what we call the new line up here. It lies, a part of it, between these two lines.

3rd Question. By whom was it conveyed to you?

Answer. My father, John H. Friend.

4th Question. The date of the deed from your father to you is Feb. 10th, 1893, is it?

Answer. Yes, sir.

5th Question. Do you live on that piece of land?

Answer. Yes, sir.

2496 6th Question. How much land is there in that tract?

Answer. 122 acres, the deed says. That is all I know about it.

7th Question. How long have you lived on it?

Answer. I cannot say positive, but I think it has been about eight years, as near as I can tell.

8th Question. You lived on it some years before you got the deed for it?

Answer. Yes, sir.

9th Question. On which side of what is called the old Maryland line is your house, east or west?

Answer. It is west of the old line.

10th Question. About how far west?

Answer. Well, I couldn't tell you. It would take a right smart of guessing to guess just how far it is. I suppose it must be pretty close to 30 rods. Upon reflection, I think it about 65 rods. That is about as near as I could get at it.

11th Question. Does your land extend westward to the new or Michler line?

Answer. No, sir.

12th Question. Do you know where the new or Michler line is?

Answer. Yes, sir.

13th Question. About how near do you come to that line?

Answer. It is just a lot across there I think. Well, it must be forty rods from my land to the Michler line. It must be 40 rods anyway. I would suppose it was.

14th Question. In what state and county is your land assessed for taxes?

Answer. Garrett county, and State of Maryland.

15th Question. How long has it been assessed in Garrett county, Maryland?

Answer. Since the date of that deed, 1893.

16th Question. In what state and county was it assessed while it was owned by your father, John H. Friend?

Answer. In Preston county, West Virginia.

17th Question. How long had your father owned that land before he deeded it to you?

2497 Answer. I will be dogged if I ain't left there. I cannot tell you exactly, but I think he had a deed for it—He bought it of the heirs when his father died. He must have had it about six or eight years before I got it. That is just as a guess. I cannot tell you exactly.

18th Question. From whom did your father get this land?

Answer. He got it of the heirs after his father died.

19th Question. Who was his father?

Answer. C. W. Friend.

20th Question. Did he have a Virginia deed or a Maryland title for the land?

Answer. Grand-father, you speak about now?

21st Question. Yes.

Answer. The parties that my father got it of. Well, they had a Virginia title, and part of the same tract, a Maryland title, both.

22nd Question. Do you know how it came to be patented in both States?

Answer. Why, this was taken up before this Michler line was run over here, taken up in Virginia, and after they had run this line, you know, Maryland claimed it, and I suppose George Evans and John, they did take it up. I suppose they thought they could make a something by it, and did. They took it up in Maryland, and rather have any trouble, grand-father bought the Maryland title of John and George Evans.

23rd Question. So that after that your grand-father had both a Maryland and Virginia title?

Answer. Yes, sir; but after he had it, he went on and paid taxes in Virginia on it.

24th Question. Just as he had done before?

Answer. Yes, sir.

25th Question. In what state and county did you have your deed recorded?

Answer. In Garrett County, Maryland.

26th Question. Do you know what the original Virginia tract was, of which this was a part, what it was called?

Answer. I think it was called Elder Hill, but Mr. Monroe says it was the Banks survey, I couldn't tell you but it seems to me
2498 Uncle Marsh says it was the Banks survey, too. I never looked at the original deed, never had it in my hands. Father has got it. I ought to have it too.

27th Question. Does this tract of land extend eastward beyond the old Maryland line?

Answer. Yes, sir.

28th Question. What tract of land does it adjoin on the east?

Answer. It adjoins the lots.

29th Question. The military lots?

Answer. Yes, sir.

30th Question. Do you know the numbers of the lots that it adjoins?

Answer. No, sir; I don't. I don't know the number of any of them.

31st Question. Who owns the military lots that it adjoins?

Answer. My brother, William H. Friend.

32nd Question. How many lots does he own over there?

Answer. He owns two. I am a little too fast. I think he owns only one and a half.

33rd Question. About what is the distance, as near as you can come at it, between the western line of the military lots, and the old Maryland line? How far are the military lots over east of the old Maryland line?

Answer. Why, I think it is about ten or twelve rods, as near as I can come at it, and I won't miss it far I don't think.

The above mentioned deed is recorded in Garrett County, Maryland, in Liber E. Z. T. No. 20, folio 443.

And further this deponent saith not.

Signature of witness waived by stipulation of counsel.

Whereupon came MARSHAL FRIEND, at the same time and place, a witness on behalf of the State of West Virginia, who, being duly sworn, deposed as follows:

Examination by Mr. PRICE:

2499 1st Question. What is your age?

Answer. 48 in December, the 3rd day of December.

2nd Question. Do you own any land along the boundary line, between Maryland and West Virginia?

Answer. Yes, sir.

3rd Question. How much land do you own?

Answer. 116 and 50, would make it 166 acres.

4th Question. By whom was that land conveyed to you?

Answer. Well, the 50 acre lot, the heirs, John Friend, and——

5th Question. Heirs of whom?

Answer. The heirs of C. W. Friend.

6th Question. Does that 50 acres lie contiguous to either of the state lines?

Answer. Why, it lies right along the new line, the Michler line, that is on the west side.

7th Question. The west side of the Micher line?

Answer. No, sir; it is the east side of the Michler line. The west side of the other line.

8th Question. Does it extend down to the old Maryland line?

Answer. No, sir.

9th Question. Have you the deed that was made to you for that fifty acres?

Answer. Yes, sir. I have.

Witness herewith produces a deed from Sarah Friend and others, to Marshal Friend, dated February 7th, 1884, recorded in Garrett County, Maryland, in Liber W. H. T. No. 8 folio 374.

10th Question. Of what original tract was that 50 acres a part?

Answer. Elder Spring.

11th Question. Is that land assessed for taxes in Garrett County, Maryland?

Answer. It is.

12th Question. Now, from whom did you acquire title to the 116 acre tract?

Answer. In the first place we got it of John James, Taylor Friend and I.

13th Question. Taylor Friend and you got it of John James?

2500 Answer. Yes, sir, got title from him, and then the half of it was conveyed to me from Taylor Friend.

14th Question. Have you the deed that was made to you and Taylor Friend by John James?

Answer. I have.

Witness herewith produces said deed, dated March, 30th, 1872, and recorded in the office of the clerk of the county court of Preston county, in deed Book No. 37, page 62, a certified copy of which is to be filed with this deposition, marked Exhibit No. 13.

Also a deed from Z. Taylor Friend and wife to Marshal Friend, dated May 16th, 1891, and recorded in the office of the clerk of the county court of Preston county, in deed book No. 71, page 186, a certified copy of which is to be filed with this deposition marked Exhibit No. 14.

15th Question. In what county and state is the 116 acre tract assessed for taxes?

Answer. In Preston county, West Virginia.

16th Question. Has it been assessed, and have you paid taxes on that tract in Preston county, since you owned it?

Answer. I have.

17th Question. Is there a dwelling house upon that 116 acres?

Answer. *I* kind of one, yes, sir.

18th Question. Do you reside on that tract?

Answer. Yes, sir.

19th Question. How long have you lived on it?

Answer. I think it is about close 20 years. Not quite.

20th Question. Do you know where the old Maryland line passes along or through your land?

Answer. Not exactly, I do something very close, though.

21st Question. Is it east or west of your residence?

Answer. East.

22nd Question. About how far east?

Answer. About 30 or 40 rods, I think.

23rd Question. And where does the new or Michler line run?

2501 Answer. It lies west.

24th Question. Does the 116 acres extend westward, as far as the Michler line?

Answer. It does.

25th Question. Does it extend any further?

Answer. No; not as far as the Michler line. It adjoins the Elder Spring, this side of the Michler line, and it is 55 rods I think across it. That would be 55 rods this side.

26th Question. Of what original tract is the 116 acres a part?

Answer. Deal tract, I think; certain of it.

27th Question. Is that a Virginia or a Maryland title?

Answer. The Deal is a Virginia title.

28th Question. Do you know where the line that was run by Julius Monroe surveyor in this case, in the fall of 1894, passes through your land?

Answer. Yes; I do.

29th Question. Is that east or west of your residence?

Answer. That is west.

30th Question. Does your 116 acre tract extend eastward beyond what is known as the old Maryland line?

Answer. It does.

31st Question. Does it extend as far over as the line of the military lots?

Answer. No, sir; it doesn't, according to the way we are looking at it.

32nd Question. Are there any military lots in Maryland lying opposite your place?

Answer. There are.

33rd Question. Do you know by whom they are owned?

Answer. They are owned by William H. Friend, and Roy Chisholm.

34th Question. Whose land adjoins you along the old Maryland line, on the south?

Answer. Melville Friend adjoins. He is all, I guess.

35th Question. And whose land adjoins you along the old Maryland line, on the north?

2502 Answer. George Teets'.

36th Question. The heirs of George W. Teets, I suppose?

Answer. Yes. I think that George Teets made Jerry Teets a deed, but I am not certain of that.

And further this deponent saith not.

Signature of witness waived by stipulation of counsel.

Residence of John Taylor, Grant District, Preston County, West Virginia, August 27th, 1896.

Present: George E. Price, attorney for the state of West Virginia.

JOHN TAYLOR, a witness produced on behalf of the state of West Virginia, being duly sworn, deposed as follows:

Examination by Mr. PRICE:

1st Question. How old are you?

Answer. I ain't so very old, going on 68.

2nd Question. Where do you now reside?

Answer. In Preston county.

3rd Question. How near to the Maryland and West Virginia boundary line do you live?

Answer. The new line, I don't believe it is much over 200 yards, if it is that, from my house.

4th Question. How long have you lived in this neighborhood?

Answer. I have lived here 40 years, I expect.

5th Question. Did you marry in this neighborhood?

Answer. Yes.

6th Question. Whom did you marry?

Answer. Andrew Teets' daughter.

7th Question. Is she living?

Answer. No; she died not quite a year ago.

8th Question. Where did Andrew Teets live?

Answer. Right over here. Not quite ¾ of a mile. He
2503 used to own this property, that I afterwards owned, where Fikes now live.

9th Question. You are acquainted, then, with the property that was owned by Andrew Teets, that adjoined on the old Maryland line?

Answer. Yes.

10th Question. Did you ever own any part of that property?

Answer. I owned 101 acres of it.

11th Question. Does that adjoin the property that was owned by George W. Teets?

Answer. The same property.

12th Question. George W. Teets got a part of the property, and you got a part? Is that right?

Answer. Yes. There is three parts.

13th Question. Who got the other part?

Answer. Davy Evans got 50 acres right down here.

14th Question. Did the part that you owned adjoin the old Maryland line?

Answer. Yes.

15th Question. Is there a house on that?

Answer. Yes.

16th Question. How far is the house from the old Maryland line?

Answer. I guess pretty close, between a quarter and a half a mile.

17th Question. Do you know where the new Maryland line was run, just before the war?

Answer. Yes.

18th Question. Does that property that you owned lie, any part of it, between the old line and the new line?

Answer. Yes.

19th Question. Does it all lie between?

Answer. Pretty much.

20th Question. Where was that property always assessed, and in which state and county did you pay taxes on it when you owned it?

Answer. In West Virginia. I never paid taxes in Maryland in my life.

21st Question. Of what state did Andrew Teets consider himself a citizen?

2504 Answer. In Virginia, always voted there.

22nd Question. And he lived there on that piece of land between what is now the two lines, did he?

Answer. Yes.

23rd Question. Has that new line ever been recognized by the people in this neighborhood, as the boundary line between the two states?

Answer. Not as I know of, because it was never decided, and they couldn't do it.

24th Question. They have always held up to which line, as the Maryland line?

Answer. The old line

25th Question. And has it been customary for the people owning lands west of the old line to pay taxes in West Virginia?

Answer. Certainly, I haven't heard no dispute, only with the Friends over here. They are kicking up against it a little bit. That is all the dispute I know of. There is George Teets pays in West Virginia, and always did pay.

26th Question. Did the authorities of the State of Maryland ever exercise any jurisdiction over that territory in there?

Answer. No, they haven't come there. They tried to have some talk about it, but——

27th Question. They never actually did it?

Answer. No, sir.

28th Question. Did they ever work the roads in there?

Answer. No, sir. They got a little confusion. Some of them won't work the roads because there is a little dispute about it. They have had a little dispute whether they would work the roads or not, but I believe West Virginia has made them come up to the scratch and work them.

29th Question. The West Virginia authorities work it up to the old line, do they?

Answer. Yes, they worked it this last fall. Alex. Thomas, right there where he lives, the corner is right the other side of the road.

And further this deponent saith not.

Signature of witness waived by consent of counsel.

2505 Residence of Sylvanus Fike, Grant District, Preston County, West Virginia, August 27th, 1896.

Present: George E. Price; attorney for the State of West Virginia.

SYLVANUS FIKE, a witness produced on behalf of the State of West Virginia, being duly sworn, deposed as follows:

Examination by Mr. PRICE:

1st Question. How old are you, Mr. Fike?
Answer. 27 past.
2nd Question. Do you own any land between what is known as the old Maryland line and the new Maryland line?
Answer. Yes, sir.
3rd Question. From whom did you buy the land that you own?
Answer. John Taylor.
4th Question. How long have you owned it?
Answer. Well, now, I ain't just sure. I think it is three years though.
5th Question. How much land have you?
Answer. 48 acres, more or less.
6th Question. That is the deed from John Naylor, to you, isn't it?
Answer. Yes, sir.

Witness herewith produces deed from John Taylor and wife, to Sylvanus Fike, dated March 25th, 1893, and recorded in the office of the clerk of the county court of Preston county, in Deed Book, No. 76, page 202, a certified copy of which is to be filed with this deposition, marked Exhibit No. 15.

7th Question. Do you live upon this 40 acres of land?
Answer. Yes sir—Well, no, sir, the house is not on it. The line is right down there. I do not live on the 48 acres of land.
8th Question. Your house is right near the line?
Answer. Yes, sir.
9th Question. That is, the line between you and whom?
Answer. And my brother J. Fike.
10th Question. Have you any buildings on the 48 acres?
Answer. Yes, sir; a barn and a granary.
2506 11th Question. How long have those buildings been on it?
Answer. I couldn't tell you how long the barn has been there. The granary I built last summer.
12th Question. Is the barn an old one or not?
Answer. The barn has been built about 15 years, I think. I know when it was built. I think it was built about 15 years ago.
13th Question. Who built it?
Answer. John Taylor. He built the barn along when he first bought the place. I think it is along there. It might not be so long, but somewhere along there.
14th Question. Did your brother you referred to buy his land from John Taylor?
Answer. Yes, sir.

15th Question. How much did he get?

Answer. I think it is 51 acres. I think that is what the deed says. I ain't sure. I think it is 51 acres though, may be 52. There was 101 and I got 48, and that would leave about 52, I reckon.

16th Question. That would make 53?

Answer. Well, I think likely, it is.

17th Question. Do you know where the old Maryland line is along here?

Answer. That is the lower line?

18th Question. Yes.

Answer. I don't know just exactly where it is. I know nearly where it is.

19th Question. Does your land extend over to the old Maryland line?

Answer. No, sir. They tell me not. There is a strip back here between.

20th Question. Who owns the strip between you and the old Maryland line?

Answer. Lenius Dietrich.

21st Question. About what distance between your eastern line, and the old Maryland line?

Answer. I couldn't just tell you. I don't know just exactly where it is. It is not far—may be something like 20 rods, and may be more. I couldn't tell you.

2507 22nd Question. Does your land extend back to what is known, as the new Maryland line, or the Michler line?

Answer. That is the line over here?

23rd Question. Yes—not the one Mr. Monroe ran.

Answer. I don't know just where that line runs through here. I think it must cut through the corner of this tract. It runs by Evans' barn, back here. It don't run through mine at all. My 40 acres is here.

24th Question. It runs through your brother's?

Answer. I think it does. Probably runs through that.

25th Question. Do you know where the line is that was run by Julius Monroe, surveyor in this case, last fall a year ago?

Answer. Yes, sir; I do.

26th Question. Is that line east or west of the house you live in, and of your barn?

Answer. It is east.

27th Question. Your house and barn, then, would be between the Monroe line, and the other new Maryland line, known as the Michler line?

Answer. Yes, sir; the house and barn are both between.

28th Question. In what state and county is your 48 acres of land assessed for taxes, and where do you pay your taxes?

Answer. State of West Virginia, and Preston county.

29th Question. So far as you know, has it always been assessed in Preston county, West Virginia?

Answer. So far as I know, it has.

30th Question. In what state and county do you vote?

Answer. Preston, state of West Virginia.

31st Question. Is this land a part of what was called the Spurgion land?

Answer. Yes, sir; I think it is.

32nd Question. Have you any deed from J. Spurgeon covering this land?

Answer. I think so.

Witness herewith produces a deed from J. Spurgeon and wife, to Andrew Teets, dated April 27th, 1855, and recorded in book
2508 32, page 411, Preston county court clerk's office, a certified copy of which is to be filed with this deposition, marked Exhibit No. 16.

33rd Question. Please produce any other deeds that you may have covering this piece of land?

Witness here produces a deed from Andrew Teets and wife to Jeremiah Hayes, dated January 24th, 1874, and recorded in the office of the clerk of the county court, in Deed Book, 38, page 438; also a deed from Jeremiah Hayes and wife to Rebecca Lininger, dated October 26th, 1878, and recorded in Book No. 47, page 55; also a deed from Samuel Lininger and Rebecca Lininger his wife, to William Hays, dated August 5th, 1880, and recorded in Book 50, page 55; also a deed from William Hays and wife to Alexander Thomas, dated September 24th, 1880, and recorded in book 50, page 288; also a deed from Alexander Thomas and wife to John Taylor, dated March 4th, 1882, and recorded in said clerk's office, in book 53, page 88.

34th Question. Your deed for this land is recorded in Preston County, West Virginia?

Answer. Yes, sir.

35th Question. Where does your brother, J. Fike live?

Answer. He lives in the other part of this house. Both in one house.

36th Question. Where does he vote and pay taxes on this land?

Answer. Votes in Preston county, state of West Virginia, same as I do.

37th Question. How long has he lived on this land?

Answer. I judge he has lived here about four years, or may be five.

Answer. Who owns the land adjoining the old Maryland line, south of yours and your brother's, on the West Virginia side?

Answer. That would be Teets.

39th Question. George W. Teets' heirs?

Answer. Yes, sir. George Teets is dead. I guess it would be his heirs.

40th Question. Who owns the land along the line north of you?

Answer. That would be Evans.

41st Question. What Evans?

Answer. George Evans runs back to my line back here,
2509 and David F.—he is dead—here. George Evans runs to mine back here at the old line. That is what they tell me. I don't know much about the lines, have never looked up the lines, but I know he does run up to mine.

42nd Question. Who built this house in which you live?

Answer. I am not able to tell you. I think Alex Thomas and Jerry Hays. Alex Thomas I guess started this house. I know when it was built.

43rd Question. About how long has it been built or started? according to your best information?

Answer. I expect it is about eighteen years. I think it must be about 17 or 18 years, as near as I can get at it. It might not be quite so long.

44th Question. Who lived in this house, before you and your brother?

Answer. Frank Stevens and George Taylor, in the two parts.

45th Question. Who lived in the house before they did?

Answer. Lucian Teets.

46th Question. Has somebody been living in it pretty much all the time since Alex Thomas built it?

Answer. I think they have, pretty much all the time.

47th Question. Can you produce the deed from John Taylor to your brother for his part of this tract of land?

Answer. Yes, sir.

Witness herewith produces said deed, from John Taylor and wife to Joshua Fike, dated April 8th, 1891, and recorded in the office of the county clerk of Preston county, in book No. 70, page 170, a certified copy of which is to be filed with this deposition, marked Exhibit No. 17.

And further this deponent saith not.

Signature of witness waived by stipulation of counsel.

Residence of George Taylor, Grant District, Preston County, West Virginia, August 27th, 1896.

Present: George E. Price, attorney for the State of West Virginia.

GEORGE TAYLOR, a witness produced on behalf of the State of West Virginia, being duly sworn, deposes as follows:

2510 Examination by Mr. PRICE:

1st Question. Whose tract of land do you live on?

Answer. George Evans's.

2nd Question. About how much land is there in this tract?

Answer. I couldn't tell you. Somewhere close to 200 acres, as near as I can get at it.

3rd Question. Do you rent the property from Mr. Evans?

Answer. Yes, sir.

4th Question. How long have you lived on it?

Answer. Two years next spring.

5th Question. Do you know where the old Maryland line is, with reference to this property?

Answer. Yes, sir.

6th Question. Does the property adjoin on that old Maryland line?

Answer. Yes, sir. It goes to the line.

7th Question. Do you know where the new Maryland line, that was run before the war, runs along here?

Answer. Yes, sir.

8th Question. Is that line east or west of the house on the tract of land on which you live?

Answer. It would be west.

9th Question. About how far west from the house?

Answer. I don't think it is over 400 yards.

10th Question. How far is it from the house to the old Maryland line, eastward?

Answer. Well, it is about a quarter of a mile.

11th Question. Do you know where the line is that was run by Julius Monroe, the surveyor in this case, last fall a year ago?

Answer. Yes, sir.

12th Question. Does that line run east or west of the house?

Answer. It runs east.

2511 13th Question. About how far east?

Answer. About 200 yards—No, it is not more than 100 yards.

14th Question. How long has the dwelling house that you live in on that land been there? How long has it been built, so far as you know?

Answer. As near as I can come at it, it has been 12 or 14 years ago, somewhere in that neighborhood. It may be longer than that, but I couldn't say for certain.

15th Question. Do you know how long Mr. Evans has owned this piece of land?

Answer. Indeed, I do not. I couldn't say.

16th Question. Who lived in the house before you did?

Answer. Andy Glover.

17th Question. Was he a tenant of Mr. Evans?

Answer. Yes, sir.

18th Question. How long had he lived here?

Answer. It wasn't more than a year, I guess.

19th Question. And who occupied the land before Glover?

Answer. Evans himself.

20th Question. Do you know how long he had lived there?

Answer. Indeed, I don't. He lived here ever since I knew it.

21st Question. In what state and county is this land assessed for taxes?

Answer. West Virginia, Preston county.

22nd Question. Has it always been assessed in Preston county, West Virginia, for taxes, as far as you know?

Answer. Yes, sir; as far as I know.

23rd Question. Where do you vote?

Answer. At Glade Farms.

24th Question. What state and county?

Answer. Preston county.

25th Question. Where did Glover, the man who lived on the place, vote and claim his citizenship?

Answer. Preston county.

26th Question. And how about Mr. Evans when he lived
2512 on the land—where did he claim his citizenship?

Answer. Preston county.

27th Question. What line has been recognized by the people of this neighborhood, as far as you know, as the state boundary line between Maryland and West Virginia?

Answer. The old line.

28th Question. Does this tract of land extend westward, as far as the new Michler line, that was run in 1859?

Answer. No, sir; not quite. I don't know, though, but one corner of it may strike the new line, that line that was run through. One corner of it may. I won't be certain about it.

29th Question. The bulk of the land then lies between the new Michler line, and the old Maryland line, does it?

Answer. Yes, sir; it lays right between them.

30th Question. Have you any of the title papers of Mr. Evans for this piece of land?

Answer. No, sir.

31st Question. Do you know where they are?

Answer. He has got them.

32nd Question. Where does he live?

Answer. At Slabtown. Some call it Clifton Mills.

33rd Question. What county and state?

Answer. Preston county.

34th Question. How far from here?

Answer. I would say ten or twelve miles anyhow, or somewhere alone there.

35th Question. Do you know what land this was, what was the original survey, who took it up?

Answer. I don't know, never heard.

36th Question. Who adjoins this land on the north, along the old Maryland line, on the West Virginia side?

Answer. Joe Guthrie. I guess William Fearer would come
2513 in on that. William Fearer and Joseph Guthrie both come right together.

37th Question. Does Fearer go down to the old line?

Answer. Yes, sir. I guess Guthrie don't go to the line.

38th Question. Who owns the land along the old line south of you?

Answer. Sylvanus Fike.

And further this deponent saith not.

Signature of witness waived by stipulation of counsel.

Residence of William Fearer, Grant District, Preston County, West Virginia.

Present: George E. Price, attorney for the state of West Virginia.

LUCINDA FEARER, a witness produced on behalf of the state of West Virginia, being duly sworn, deposes as follows:

Examination by Mr. PRICE:

1st Question. You are the wife of William Fearer, are you?

Answer. Yes, sir.

2nd Question. Does your husband own a piece of land adjoining the old Maryland line?

Answer. Yes, sir.

3rd Question. How much does he own?

Answer. Why, there is 45 acres in the tract, and then there is 7 acres that is off of this here, that went to Alex Thomas, that he pays taxes for. What would be left then would be about 37¾ acres, or 38, something like that. I most forget.

4th Question. From whom did your husband, William Fearer, get this land?

Answer. From his father.

5th Question. What was his father's name?

Answer. Joseph Fearer.

6th Question. This is the deed from Joseph Fearer to Joseph and William Fearer?

2514 Answer. Yes, sir.

Witness herewith produces deed from Joseph Fearer, Sr., and wife, to Joseph Fearer, Jr., and William Fearer, dated the 17th day of April, 1883, and recorded in the office of the clerk of the county court of Preston county, in Deed Book No. 56, page 193, a certified copy of which is to be filed with this deposition marked Exhibit No. 18.

7th Question. You and your husband live upon this tract of land, do you?

Answer. Yes, sir.

8th Question. How long have you lived on it?

Answer. Well, we was married in—well, it will be 14 years in the spring. We was married the 11th of March, and went to housekeeping in April, I think.

9th Question. You have lived here ever since you were married?

Answer. Yes, sir; have lived here ever since we were married.

10th Question. Who built the house in which you now reside?

Answer. Why, William Fearer.

11th Question. Did Joseph Fearer, Jr., convey his half interest in this land to William Fearer.

Answer. Yes, sir.

12th Questio-. Have you the deed?

Answer. Yes, sir.

13th Question. Have you it here?

Answer. No, sir haven't got it here.

14th Question. Where is it?

Answer. It is at Kingwood, that is, the one for the half of the land.

15th Question. Sent there to be recorded?

Answer. Yes, sir, and we have never got it back.

16th Question. Where is the old Maryland line with reference to this land?

Answer. Why, it is between here and Alex Thomas's. Well, it runs right above that stable down here.

17th Question. Does this land run down to the old Maryland line?

Answer. Yes, sir.

2515 18th Question. Does it extend beyond the old Maryland line, or does it border on the line?

Answer. No; it don't run below. I think it is right on the line from what I can recollect or know about it.

19th Question. In what state and county does your husband pay taxes on this land?

Answer. Preston county, West Virginia.

20th Question. In what county does your husband vote?

Answer. In Preston county, West Virginia.

21st Question. Has he always voted there since he lived on this place?

Answer. Yes sir; he always votes up here at Glade Farms, Preston county, West Virginia. That is his nearest place to vote, I believe, up here at Glade Farms. He has voted there ever since we were married anyhow, and I guess he did before. That is where his father voted. He would go there to vote.

22nd Question. Whose land adjoins you on the north, along the old line?

Answer. John Van Sickle, or Charlie. Charlie's is the nearest to us. This end is Charlie's, and the other belongs to Van Sickle, his father, I think.

23rd Question. His father's name is John Van Sickle?

Answer. Yes, sir.

24th Question. And Charlie is the son of John?

Answer. Yes, sir.

25th Question. Who adjoins you on the south, along the old line?

Answer. Why, George Evans.

26th Question. Is that the place that George Taylor lives on?

Answer. Yes, sir; that is the place. That land runs part of it to the county road here.

27th Question. Is there a public road through, or near your land?

2516 Answer. Yes, sir; near here.

28th Question. Which state works that road, Maryland or West Virginia?

Answer. West Virginia works it. You see they work right along out here, to the Maryland line, and the Marylanders work up.

29th Question. Is that to the old Maryland land, the eastward part of your land?

Answer. Yes, sir; I think it is.

30th Question. Does your husband work the road as a citizen of West Virginia?

Answer. Yes, sir.

31st Question. Where is your husband, William Fearer, now?

Answer. Why, he is on the saw mill. He is working for Knabb & Company.

32nd Question. About how far from here?

Answer. I expect it is four or five miles. Four and a half anyhow.

And further this deponent saith not.

Signature of witness waived by stipulation of counsel.

Residence of Joseph Guthrie, Grant District, Preston County, West Virginia, August 27th, 1896.

Present: George E. Price, attorney for the state of West Virginia.

JOSEPH GUTHRIE, a witness produced on behalf of the state of West Virginia, being duly sworn, deposes as follows:

Examination by Mr. PRICE:

1st Question. What is your age?

Answer. I was 50 the first day of June last.

2nd Question. Do you own a tract of land near or adjoining the Maryland and West Virginia boundary line, in Preston county, West Virginia?

Answer. Well, the new line goes through it, but I don't run to the old line. I have land between the two lines.

3rd Question. How much land have you in your whole tract?

Answer. That is, what I own here, you mean?

Answer. Yes.

2517 Answer. There is 85 acres, and 25, and 30.

5th Question. Have you a dwelling house on the land?

Answer. Yes; this house.

6th Question. Does the dwelling house stand east or west of what is known, as the old Maryland line?

Answer. West of it.

7th Question. How far west?

Answer. You might throw a stone across it over here. Possibly 50 yards, along there—75, along there some place close.

8th Question. Do you know where the line that was run by Julius Monroe, in the fall of 1894, in this case, passes through your land?

Answer. Yes, sir; I know where he went through my place.

9th Question. Can you give an estimate of about how far, his line was east of the new Maryland line?

Answer. Only at a guess. I think his line at a guess, was about half way between the old line and the new one. Of course, I never measured it or stopped it or anything. It would be only a guess.

10th Question. Whose land is between yours and the old Maryland line?

Answer. George Evans's, and William Fearer's. They ain't both side and side. One is at the upper end of the place, and one at this end. They connect over here at this county road.

11th Question. How long have you occupied your present dwelling house?

Answer. We had it only partly built when we moved in it. But it has been 12 or 13 years since we built the house.

12th Question. Was there a house here before you built this one?

Answer. Yes, sir.

13th Question. How long had the old house been on the land?

Answer. I cannot tell that. It was here when I came here.

2518 14th Question. From whom did you purchase this land?

Answer. Andrew G. Friend.

15th Question. Have you your deed from Friend?

Answer. Yes, sir.

Deed herewith produced, from Andrew G. Friend and wife, to Joseph Guthrie, dated March 30th, 1870, and recorded in the office of the clerk of the county court of Preston County, March 31st, 1870, a certified copy of which is to be filed with this deposition, marked Exhibit No. 19.

16th Question. Have you the title papers for this tract of land, running back from Friend?

Answer. Yes, sir.

Witness here produces the following title papers: First, Patent from the Commonwealth of Virginia to Gabriel Moore, for 100 acres of land, dated August 31st, 1847, Book 99, page 336; second, deed from Gabriel Moore's heirs to Ely Moore, for the same 100 acres, dated June 2nd, 1855, and recorded in Preston county, Book 11, page 455; third, Ely Moore to Andrew G. Friend, dated January 9th, 1865, for 80 acres, part of said 100 acres, and 5 acres of another tract, recorded in said clerk's office, in Book No. 19, page 24; a deed from Ely Moore and wife to Alexander Thomas, for 25 acres, part of said 100 acres, dated Oct. 7th, 1862; and recorded in Deed Book No. 17, page 86; a deed from William H. Herring and wife to Joseph Guthrie, dated April 11th, 1872, conveys said 25 acres, and is recorded in book 38, page 365.

17th Question. Have you the deed from Alexander Thomas to William H. Herring, for that 25 acres?

Answer. Yes, sir; I have.

Witness produces said deed, dated June 9th, 1869, and recorded in book No. 31, page 71. Said deed was made in lieu of one that was burned in the court house of Preston county, March 7th, 1869.

18th Question. In what county and state are these lands assessed for taxes?

Answer. Preston county, and state of West Virginia.

19th Question. Have you paid taxes upon them in Preston county since you have owned them?

2519 Answer. Yes, sir.

20th Question. The whole of them, both those that lie east of the new Maryland line, as well as those that lie west?

Answer. Yes, sir; 411 the whole piece, never paid them anywhere else. They come up from Maryland one time, and tried to assess me against my will, and I wouldn't be assessed. They did assess some around here, and caused them some trouble, but when they came to collect taxes, they refused to pay it, Mr. Van Sickle—they took his against his will, and the party came there to collect taxes, and he notified him not to touch anything on his place, and he went off, and never came there any more.

21st Question. Is there a public road running through or near your land?

Answer. Yes, sir; this county road out here goes through my land.

22nd Question. Which direction does it run?

Answer. East and west, or about so.

23rd Question. How far is it worked eastward, under the authority of West Virginia?

Answer. To the old line.

24th Question. Have the Maryland authorities ever worked that road, or any other public road in this neighborhood, westward of the old line?

Answer. Not to my knowledge.

25th Question. Which line has been recognized by the people of this neighborhood as the boundary line between the states, so far as you know?

Answer. They all hold to the old line, so far as I know. I always held there, and other people do the same. We look upon the old line, as being the standard. Of course, I have married a good many people, and marry up to the old line.

26th Question. Are you a minister of the gospel?

Answer. Yes, sir.

27th Question. And you have license to marry from Preston county, West Virginia?

2520 Answer. Yes, sir.

28th Question. And you exercise that privilege over to the old line?

Answer. Yes, sir. I marry on the other side too, because on the other side, any ordained minister can marry — in Maryland. I file a bond for West Virginia, but there I don't need to.

29th Question. Whose land lies north of yours?

Answer. There is two tracts, but lying due north, I wouldn't hardly know who to tell you, but along the line would be Charlie Van Sickle.

30th Question. Does Charlie Van Sickle's land run down to the old line?

Answer. I cannot hardly tell you that. No, I don't think his does, but the whole tract, where he got off of it, I think it does. His father's tract I think does.

31st Question. What is his father's name?

Answer. John Van Sickle. I don't think his reaches the line. I

think he goes across to Bill Fearer, and Billy comes a little in between him and the line.

And further this deponent saith not.

Signature of witness waived by stipulation of counsel.

Residence of Charles T. Van Sickle, Grant District, Preston County, West Virginia, August 27th, 1896.

Present: George E. Price, attorney for the state of West Virginia.

CHARLES T. VAN SICKLE, a witness produced on behalf of the state of West Virginia, being duly sworn, deposes as follows:

Examination by Mr. PRICE:

1st Question. What is your age?

Answer. Well, I might as well say 47. I will be 47 the last day of next month, if I live that long.

2nd Question. Do you reside on a piece of land adjoining the boundary line between Maryland and West Virginia?

2521 Answer. Yes, sir; Well, now, I own a part of this same tract, of course. I don't own the part adjoining the line, but the part I own is a part of that.

3rd Question. You live on the part you bought, do you?

Answer. Yes, sir.

4th Question. And it don't run to the line?

Answer. No; but it is a part of the old home place.

5th Question. What was your father's name?

Answer. John Van Sickle.

6th Question. Is he still living?

Answer. No, sir; he is dead.

7th Question. When did he die?

Answer. Died June 17th, 1894.

8th Question. What quantity of land do you own now, individually?

Answer. I have 68 acres, and some perches.

9th Question. Where did you get your title to that, from whom?

Answer. From John Van Sickle.

10th Question. Your father?

Answer. Yes, sir.

11th Question. What quantity of land did John Van Sickle own in a body here, before you bought?

Answer. He owned 228 acres and a quarter, 170 and 58, 228. I think there was a quarter to it somewhere.

12th Question. Now, from whom did he acquire his title to that land?

Answer. From David Van Sickle, his father, and Joseph Fearer. They were adjoining neighbors at that time.

13th Question. Have you the title papers for that land?

Answer. Yes, sir. The widow, my step-mother holds them of course. All except what I have bought is hers her lifetime.

The witness here produces a patent from the Commonwealth of

Virginia to David Van Sickle, dated Sept. 20, 1834, for 100
2522 acres of land, recorded in Book 83, page 388; also patent from Virginia to Jacob Sisler for 70 acres, dated November 10th, 1834, and recorded in book 83, page 588; also deed from Jacob Sisler and wife to David Van Sickle for the same 70 acres dated November 14th, 1835, and recorded in Preston county, in Book No. 4, page 143; also a deed from David Van Sickle and wife to John Van Sickle, for the two tracts of 100 acres and 70 acres respectively, dated Jan. 10th, 1865, and recorded in Preston county in book No. 32, page 36; also a deed from Joseph Fearer and wife to John Van Sickle, dated May 10th, 1856, and recorded in book 32, page 38, Preston county, conveying 58¼ acres, adjoining the two tracts above mentioned.

14th Question. Where does this 228 acres that was owned by your father John Van Sickle, lie with reference to what is known as the old Maryland line?

Answer. The eastern boundary is known as the old Maryland line. The property runs parallel with the line, north and south.

15th Question. You mean when you say parallel——

Answer. Running with it, without any deviation.

16th Question. The eastern line of the property is the old Maryland line?

Answer. Yes, sir.

17th Question. Do you know where the new Maryland line is that was run just before the war, in 1859?

Answer. Yes, sir.

18th Question. Does that pass through your property, or not?

Answer. Yes, sir; it passes through a part of the 228 acres. Perhaps it will cut off 12 acres—not any more, I don't think, in West Virginia.

19th Question. On the west?

Answer. Yes, sir. Nearly all the property lies between those two lines.

20th Question. So all the 228 acres lies between the old line and that new line, except possibly 12 acres?

Answer. Thereabouts.

21st Question. Is there a dwelling house on that tract of land, on the 228 acres?

Answer. Yes, sir; two dwelling houses.

2523 22nd Question. How long has the house been standing in which your father lived?

Answer. Now, you are too hard for me there. Grand-father built it, David Van Sickle, and I cannot tell you. It is before my time.

23rd Question. Who has lived in that house since it was built, so far as you know?

Answer. I was born in the house, and raised in it, and my father lived in it until he died. I lived up at Terra Alta a little one summer, and while I was gone off the place, father moved up in this house, and when I came back, he moved back down. He never

moved off of the property since he owned it. His widow still lives in the house.

24th Question. You live in another dwelling house on the same property, do you?

Answer. Yes, sir.

25th Question. That is on the part of the property that you bought?

Answer. Yes, on the same 228 acres, the same property that my father owned.

26th Question. How long has the house been built in which you live?

Answer. 17 years this summer.

27th Question. Has it been occupied as a dwelling house ever since?

Answer. Ever since.

26th Question. What proportion of this 228 acres is cleared, improved land?

Answer. Well, there is about 150 acres cleared I guess, as near as I can tell.

29th Question. Is there a fence along the old Maryland line?

Answer. Yes, sir, a fence right on the line.

30th Question. How long has it been there?

Answer. Well, I couldn't tell you anything about it. It has been there, ever since I have known anything at all. A line fence, between two properties, between Zachariah Van Sickle, and John Van Sickle, my father.

31st Question. Does Zachariah Van Sickle hold his land, under a Maryland title?

2524 Answer. I suppose he does. It is in Maryland.

32nd Question. In what state and county has this 228 acres of land been assessed for taxes, as long as you have known it?

Answer. Preston county, West Virginia.

33rd Question. And the tax has been paid on it in Preston county?

Answer. Yes, sir; always, even in my grand-father's time. Oh, of course always has been, since it has been paid by anyone.

34th Question. In what state and county do you vote?

Answer. West Virginia. Preston county.

35th Question. Did your father vote also in Preston county, while he lived on this property?

Answer. Yes, sir.

36th Question. Do you know where the line that was run by Mr. Julius Monroe, the surveyor in this case, in the fall of 1894, is?

Answer. I do.

37th Question. Is that line east or west of the two dwelling-houses, your mother's and yours?

Answer. East. I don't think it is more than 40 rods up yonder across.

38th Question. How does that line run with reference to the old line and the new Michler line?

Answer. Well, now, I think it is nearer the old line, than it is

the western line. I am pretty certain it is. That is my information about it.

39th Question. The dwelling-houses of which you have spoken—are they east or west of the new Michler line?

Answer. East. That is the line that was first run, you have reference to.

40th Question. Yes, sir; just before the war?

Answer. They are all east of that.

41st Question. They are then between Mr. Monroe's line and the Michler line?

Answer. Yes, sir; between these two new lines.

42nd Question. What kin was David Van Sickle, who took up this land, to your father?

2525 Answer. David Van Sickle was his [illegible]her, and my grandfather.

43rd Question. Who owns the balance of the 268 acres, besides the 68 you own?

Answer. The widow has her lifetime interest, and then it goes to the heirs.

44th Question. It has never been divided among the heirs?

Answer. No, sir; she is living yet.

And further this deponent saith not.

Signature of witness waived by stipulation of counsel.

Residence of George W. Van Sickle, Grant District, Preston County, West Virginia, August 27th, 1896.

Present: George E. Price, attorney for the state of West Virginia.

GEORGE W. VAN SICKLE, a witness produced on behalf of the state of West Virginia, being duly sworn, deposes as follows:

Examination by Mr. PRICE:

1st Question. What is your age?

Answer. I will be 27 the 24th of October coming, if I live until then.

2nd Question. Do you live on a piece of land that adjoins what is known as the old Maryland line?

Answer. Yes, sir; always said to be.

3rd Question. How much land have you in that tract?

Answer. The deed I believe calls for 120 acres and something, 5/9 if I mistake not.

4th Question. How long have you owned this land?

Answer. Well, I bargained for it last fall two years ago, it will be three years this fall, but there is no writings made for it, except an article, until that deed was made in March I believe, two years ago last March.

The witness here produces a deed, from Joseph Fearer, and wife, to George W. Van Sickle, dated March 5th, 1894, and not
2526 recorded. Said deed conveys a tract of land situated in Grant District, county of Preston, and state of West Virginia, being

part of the land known as the Van Sickle farm, adjoining lands of John Van Sickle and others, and bounded as follows, to-wit: Beginning at a stone pile, and running thence south 84½ east, 240 poles to a line, said to divide Maryland and W. Va.; south ½ a degree west 79 1/3 poles to a black oak; north 75 west 80 poles, north 56 west 47 poles; south 30 west 87 —; north 54 west 100 poles to a stone pile; north 2 east 72 poles to the beginning, containing 120 5/9 acres, more or less, being the same land that was conveyed to the said grantor by John H. Smith and wife, by deed now of record in deed book No. 65, page 250, of the records of Preston county, West Virginia.

5th Question. Where is the old Maryland line with reference to this tract of land?

Answer. It is just about half a mile east of here. No, it is not half a mile. Fikes measured the distance from the road out here, but I forget what they said.

6th Question. Does this land extend simply to that line, or does it go beyond?

Answer. What I own just goes to it.

7th Question. The old Maryland line then constitutes the eastern boundary of your land?

Answer. Yes, sir.

8th Question. Do you know where the new or Michler line that was run just before the war, is?

Answer. Not exactly, but it is over in those woods some place.

9th Question. Does it pass through your land?

Answer. Yes, sir.

10th Question. Have you a dwelling house on the piece of land?

Answer. Yes, sir.

11th Question. It is the house you live in?

Answer. Yes, sir.

12th Question. Where is that dwelling-house with reference to the old line, and the new Michler line?

2527 Answer. Well, from what they tell me—I didn't see that line run in there, but from what others talk about it that seem to know, it must be about half way between, something near half way. Of course it might be closer one than the other.

13th Question. How long has this dwelling-house stood here?

Answer. Something like seven or eight years, probably not more than seven.

14th Question. Has it been occupied as a dwelling since it was built?

Answer. Yes, sir; it was moved in just as soon as it was finished enough to move in it.

15th Question. Who built it?

Answer. Joseph Fearer, Jr.

16th Question. Did he continue to live in it until you moved into it?

Answer. Yes, sir; he moved out about a week or may be a couple of weeks before I moved in.

17th Question. Had there been any dwelling house on this land before this was built?

Answer. No, sir. That is, where I own now, there wasn't.

18th Question. This tract that you now own was a part of what is known as the Lewis Van Sickle land, isn't it?

Answer. I think so. Lewis Van Sickle was dead before my time. My father owned it is the first I remember.

19th Question. What was your father's name?

Answer. Zachariah.

20th Question. When did he get it?

Answer. I don't know. He owned it when I was born.

21st Question. How long after?

Answer. It was sold when I was six years old. It was sold at court, and I know there was part of it that Lewis Van Sickle owned at one time, because the house that he lived in stands yet, down in Maryland, and probably my father owned some that Lewis never did own. I reckon my father bought a tract over in here
2528 that Lewis that is my grand-father never did own. But part my father owned, my grand-father owned, because the house is standing there yet. My brother-in-law uses it now to put hay in.

22nd Question. That house is beyond the old Maryland line?

Answer. Yes, sir, that house is in Maryland.

23rd Question. The Lewis Van Sickle tract of land originally extended beyond the old Maryland line?

Answer. Yes, sir; where he lived is in Maryland, but whether he owned any in this state or not I cannot tell you.

24th Question. In what state and county is this tract of land upon which you live assessed for taxes, and where do you pay your taxes?

Answer. I pay my taxes to Albert Fearer over here. He has been the tax collector. It belongs to Preston county, West Virginia. Mr. Pulliam has been our assessor. He has been around here until this last spring, and Ed Cuppett came.

25th Question. Has the land, so far as you know, always been assessed and taxes paid on it in West Virginia?

Answer. Yes, sir; so far as I know it has.

26th Question. In what state and county do you vote?

Answer. Preston county, West Virginia. That is, since I lived here, I have. Well, I don't know that I ever voted any place else.

27th Question. How much of this tract of 121 acres of land is cleared and improved?

Answer. Now, I will just have to guess at it. I couldn't hardly tell you, but something like 50 or 60 acres, I suppose, cleared.

28th Question. Is there a fence along the old Maryland line?

Answer. Yes, sir; a fence said to be right on the line.

29th Question. How long has it stood there?

Answer. When George De Berry owned this, there was a fence built there then. I helped to build it. I was working for him, but there was a surveyor run it after that, and differed a little bit on the line, and they moved the fence. It has probably been five or six years since it was built.

2529 30th Question. How long since you first built it?

Answer. I suppose it has been 12 years likely, something like that.

31st Question. Was that the first time there ever had been a fence?

Answer. I think likely that was the first time there had ever been a fence on the line. When my father owned it in Maryland and West Virginia both, we held right across the line.

32nd Question. What line has been recognized by the people in this neighborhood, as the boundary between the two states?

Answer. Well, this old line has been generally. Of course, there has been a heap of talk about these new lines becoming the permanent line, but in any troubles or difficulties or anything, they would always take the old line as the line.

33rd Question. The West Virginia authorities exercised jurisdiction up to the old line?

Answer. Yes, sir. If anybody got into trouble, he generally made it across that old line before he felt safe, anyhow.

34th Question. Whose land adjoins yours on the south, next to the old Maryland line?

Answer. John Van Sickle's. Of course, he is dead now, but it is known as the John Van Sickle tract. His wife and heirs I suppose own it now. I don't know whether he ever willed it or anything.

35th Question. Who owns the land on the north, on the old Maryland line?

Answer. It would be a part of what belonged to this. It belongs to Abe Fike now. Marsh took the part next to Maryland, and west of that his brother Abe joins with me, and theirs extends just about as far west as mine does.

36th Question. How far east does it extend?

Answer. The two together extends to the Maryland line, and then, Fike, Marsh, my brother-in-law, owns some in Maryland, and it extends as far south as mine does. His, in Maryland, is as far along the Maryland line as ours is in West Virginia, on the upper side.

2530 And further this deponent saith not.

Signature of witness waived by stipulation of counsel.

Residence of Jacob A. Fike, Grant District, Preston County, West Virginia, August 28th, 1896.

Present: George E. Price, attorney for the state of West Virginia.

William M. Fike, a witness produced on behalf of the state of West Virginia, being duly sworn, deposes as follows:

Examination by Mr. Price:

1st Question. What is your age?

Answer. 35.

2nd Question. Where do you reside?

Answer. In Maryland.

3rd Question. Garrett County?

Answer. Yes, sir.

4th Question. Do you reside near the boundary line between Maryland and West Virginia?

Answer. It is said to be, yes, sir.

5th Question. Do you own any land lying on the West Virginia side, adjoining the old Maryland line?

Answer. Yes, sir.

6th Question. Do you own it alone, or do you own it in common with somebody else?

Answer. It is together. Jacob A. Fike and myself together. Haven't made any deeds yet.

7th Question. How much do you and your brother own together, lying in West Virginia?

Answer. 150 acres and a fraction. Nearly 151. It is about 7/8 of an acre I think.

8th Question. Who did you get this land from?

Answer. We bought it of De Berry and heirs. George De Berry we bought of, and Jones De Berry's heirs.

2531 9th Question. How long have you owned this land?

Answer. We bought the land the date of that deed, the 12th of October, 1888.

10th Question. Do you know where the new Maryland or Michler line is?

Answer. I am not positive.

11th Question. Do you know about where it is?

Answer. Well, I couldn't say that I know about where it is. I cannot say anything about that, because I don't know.

12th Question. Is it your understanding that it runs through this tract of land?

Answer. Yes, sir; it runs through up here nearly as far from this line, by Mr. Monroe, as it is from this line down. I never see neither line run at all. It is all hearsay with me.

13th Question. According to your understanding, is there a part of this tract of land lying west of the Michler line?

Answer. Yes, sir.

14th Question. About what part of it, how much?

Answer. It would be a small point. I couldn't tell you. It would not be very much.

15th Question. How many acres would it be?

Answer. It would only be a guess.

16th Question. Does the bulk of 151 acres lie between the old Maryland line, and the new Michler line?

Answer. It certainly does, according to my best judgment.

17th Question. Is there a dwelling house on that piece of land?

Answer. Yes, sir. This house here stands on it.

18th Question. Who lives in it?

Answer. Jacob A. Fike.

19th Question. How long has Jacob A. Fike lived in that house?

Answer. He could answer that best himself. I cannot just tell to say how long it has been.

20th Question. Do you know how long that house has been built on that piece of land?

2532 Answer. I couldn't tell you exactly.

21st Question. What is your best recollection?

Answer. I think it has been about 20 or 21 years. I think it has been something near that.

22nd Question. Do you know who built it?

Answer. Isaac Morris did the carpenter work on it.

23rd Question. Who owned the land at the time it was built?

Answer. Zachariah Van Sickle's widow. He had contracted to put the house up before he died, and she put up the house after he died.

24th Question. Did Zachariah Van Sickle own this land at one time?

Answer. It appears so.

25th Question. In what county and state is this 151 acres of land assessed for taxes?

Answer. Preston county, West Virginia.

26th Question. Have you paid taxes on it in Preston county, West Virginia, since you have owned it?

Answer. Yes, sir; all the time. I pay taxes for my share, all in this state and county, Grant District.

27th Question. How far east of the old Maryland line, is your dwelling house, as near as you can tell?

Answer. 40 rods or over I suppose.

28th Question. Is that dwelling house on what is known as the Maryland military lots?

Answer. The way I had the line run, it is a tract called an addition to Arabia and Sophia.

29th Question. What is the distance between the western lines of the military lots, along there, and what is known as the old Maryland line?

Answer. Now, I couldn't tell you what it is every place.

30th Question. Along where you are?

Answer. About 40 some rods, I suppose, or up in 40 to the best of my judgment. I didn't measure it. It is only supposition.

31st Question. You hold that land, lying east of the old Maryland line, under Maryland titles?

2533 Answer. Yes, sir, and pay the taxes for the land in Maryland.

32nd Question. Do you know where the line that was run by Mr. Monroe, the surveyor in this case, passes through your and your brother's tract of land?

Answer. I don't know positive, didn't see it.

33rd Question. Have you been shown where it is?

Answer. I have seen a stake, yes.

34th Question. And that line is about how far west of the old Maryland line?

Answer. It must be near 90 rods, I expect. In the neighborhood of 90 rods, I suppose.

35th Question. Who owns the land south of your and your brother's tract, along the old Maryland line, on the West Virginia side?

Answer. George W. Van Sickle.

36th Question. And who owns the land north of that tract on the West Virginia side?

Answer. Isaac M. Umbel, Franklin Fike and Mrs. Mary Ann Evans.

37th Question. Is this tract of land owned now by you and your brother, known as the Lewis Van Sickle land?

Answer. Part of it is of the Lewis Van Sickle. This land is of the Lewis Van Sickle tract, and Zachariah owned it all, according to the papers, what we own.

38th Question. What relation was Lewis Van Sickle to Zachariah?

Answer. Lewis Van Sickle was Zachariah's father.

39th Question. Can you give the names of the heirs of Jonas De Berry, from whom you purchased this land?

Answer. I can give you the names of some of them. I don't know if I could give them all or not.

40th Question. Just give us their names as far as you can recollect?

2534 Answer. I believe, according to what people tells me, there is Anna, Bensen, and Mary Ann Feathers, and one married a Smith, Henry Smith, and Lydia, I think one's name is, married a Norman. There are so many of them, I don't know if I can think of them or not. George De Berry, Frank, one that married John A. Reckard. There are more, I guess, some place, but I can't just mind them now. I think may be there was ten, more or less. I ain't certain.

41st Question. Do you own any part of any of the Maryland military lots?

Answer. I own a part of No. 2998, an acre, more or less.

42nd Question. Where does that lot No. 2998 lie with reference to your residence?

Answer. Due east.

43rd Question. Do you know where either corner of that lot No. 2998 is, the marked corner?

Answer. They say the bounded whiteoak is a corner.

44th Question. Which corner of the lot is the bounded whiteoak?

Answer. North-west.

45th Question. How near is that whiteoak to your dwelling house?

Answer. 15 or 20 rods, I guess across.

46th Question. Which direction from the house?

Answer. North.

47th Question. Nearly due north or north-east?

Answer. It is nearly due north. If the house was half a rod further down, it would be bound to be north, by the compass.

48th Question. It is a little bit east of north?

Answer. Yes, sir. A little fraction.

And further this deponent saith not.

Signature of witness waived by stipulation of counsel.

JACOB A. FIKE, a witness produced on behalf of the state of West Virginia, at the same time and place, being duly sworn, deposes as follows:

Examination by Mr. PRICE:

1st Question. What is your age, Mr. Fike?

2535 Answer. 31 years, nearly 32.

2nd Question. Are you a brother of William M. Fike, who has just testified in this case?

Answer. That is what they say.

3rd Question. Where do you reside?

Answer. I reside in Preston county.

4th Question. What tract of land do you live on?

Answer. On the tract known as the Zachariah Van Sickle tract.

5th Question. Is that the same land that is owned in common by you, and your brother, William M. Fike?

Answer. A part, yes, sir, of that tract is owned by he and I.

6th Question. Where is what is known as the old Maryland line, with reference to the tract of land on which you live?

Answer. It is east of this tract, the line known as the old Maryland line.

7th Question. Does this tract run up to and border on the old Maryland line—I mean the land owned by you and your brother?

Answer. Yes, sir.

8th Question. The old Maryland line, then, is the eastern boundary of that piece of land?

Answer. Yes, sir.

9th Question. Now, where is the new Michler line?

Answer. Well, it runs through the western part of this tract, to the best of my information, the extreme western part.

10th Question. Where is the dwelling-house in which you live, with reference to these two lines?

Answer. To the best of my information, it is near the center, between the Deakins and the western lines. Near half way between.

11th Question. In what state and county has that land been assessed, and in which have the taxes been paid on it?

Answer. State of West Virginia and County of Preston.

12th Question. Has that been the case as long as you have known the land?

Answer. Yes, sir.

2536 13th Question. Which line is regarded and recognized by the owners of this land, and the people in the neighborhood as the state boundary line?

Answer. The Deakins line.

14th Question. The old Maryland line?

Answer. Yes, sir.

15th Question. In what state and county have you voted since you have lived on this land?

Answer. I have voted one year, since I have lived on this land in Garrett county, State of Maryland. Since that I have voted in Preston County, West Virginia.

16th Question. In what state and county do you claim your citizenship and residence?

Answer. In the state of West Virginia, county of Preston.

17th Question. Do you know where the line that was run by Julius Monroe, surveyor in this case, passes through this land?

Answer. Why, to the best of my information it passes here very close, to the house, passes about I suppose it must be eight rods below the house, something near that.

18th Question. Eight rods east of the house?

Answer. Yes, sir, as near as I can tell. I believe that would hit it about right.

19th Question. How long have you lived in the house in which you now live?

Answer. I have lived, have my residence here, and paid my taxes as a resident of this state, since the fall of 1890.

19th Question. Who occupied the house before you took possession of it?

Answer. Alice Van Sickle. She was a renter here under us.

20th Question. How long had she rented of you?

Answer. She was living—I cannot say altogether, she was a renter either. George De Berry occupied the house when we bought.

21st Question. Was George De Berry's wife one of the heirs of Jonas De Berry?

Answer. No, George himself was one of the heirs.

2537 22nd Question. Do you know how long this house has been built?

Answer. Why, not exactly, I believe eighteen or 20 years though.

23rd Question. It has been occupied as a dwelling house since it was built?

Answer. Yes, sir.

24th Question. So far as you know in what state and county have the people who lived in this house held their citizenship and residence?

Answer. State of West Virginia, and county of Preston.

25th Question. Is there a school-house in this neighborhood, between the Michler line, and the Maryland line?

Answer. Yes, sir.

26th Question. Where is that school-house situated?

Answer. Near Charles Van Sickle's.

27th Question. Whose land was granted to erect the school-house on?

Answer. Charles Van Sickle made the deed to the county for the land?

28th Question. By the authorities of which state, Maryland or West Virginia, was that school-house erected?

Answer. By the authorities of West Virginia.

29th Question. Has a school been taught in it?

Answer. Yes, sir.

30th Question. Under what authority was the teacher employed?

Answer. He was employed under the authorities of West Virginia. I helped to employ the teachers both times, as one of the trustees of the school.

31st Question. What proportion of this 151 acres owned by your brother William M. and yourself, is cleared and improved land lying between the two lines?

Answer. I suppose about half, something near it. Not quite half, but something near it. I suppose there is near 75 acres.

32nd Question. Who owns the land on the Maryland side of the old Maryland line, adjoining this 151 acres?

Answer. William M. Fike and Franklin T. Fike.

33rd Question. Do you know where the line of the military lots are, that lie opposite this land in Maryland?

2538 Answer. No, sir; I don't; am very poorly versed on the lines of the military lots.

And further this deponent saith not.

Signature of witness waived by stipulation of counsel.

Residence of Abraham J. Thomas, Grant District, Preston County, West Virginia, August 28th, 1896.

Present: George E. Price, attorney for the state of West Virginia.

ABRAHAM J. THOMAS, a witness produced on behalf of the State of West Virginia being duly sworn, deposes as follows:

Examination by Mr. PRICE:

1st Question. What is your age?

Answer. I am 73.

2nd Question. Where do you reside?

Answer. I live in West Virginia, of course, always been under West Virginia laws.

3rd Question. How near do you live to the Pennsylvania line?

Answer. Why, it is about, not more than 15 rods from here, I guess. I guess that is about all.

4th Question. How near to what is known as the old Maryland line?

Answer. Well, the old Maryland line—of course that is said to be the line, and the Marylanders you know work the road to that line, that is the line yet, and never given it up yet.

5th Question. I mean the line that is known as the Maryland line now? How far is that from your house?

Answer. It isn't over 40 rods, I guess.

6th Question. Is it east or west of your house?

Answer. It is east.

7th Question. Do you own a piece of land, in the corner, between the Pennsylvania line, and that old Maryland line?

Answer. My son owns that now. He has got the deed for it.

8th Question. What is the name of your son who owns it?

Answer. That is Marshal M. Thomas.

2539 9th Question. Do you know by whom that land was first taken up and patented?

Answer. Why, that was Gregg, and that was the man my father bought it of. You know he run that far over in Maryland. They thought, you know, it was in Virginia, and I had to pay taxes on it a good many years.

10th Question. Who got the patent for this 100 acres in here?

Answer. My father.

11th Question. What was his name?

Answer. Jacob A. Thomas.

Witness here produces the original patent that was granted by the Commonwealth of Virginia, to Jacob Thomas, for 100 acres of land, situated in Preston county, adjoining the Pennsylvania and Maryland lines, dated January 18th, 1837, and recorded in Book No. 86, page 618.

12th Question. Do you now live on that 100 acres of land described in that patent?

Answer. Yes, sir.

13th Question. How long have you lived on it?

Answer. I have lived on it now about 50 years, I think, if I am not mistaken, somewhere in 50 years since I got it.

14th Question. Did your father live on it before you?

Answer. Yes, sir.

15th Question. Did you buy it of your father?

Answer. Yes, sir; I bought it of him.

16th Question. Is there a monument on the Pennsylvania line anywhere east of where you live?

Answer. The corner stone you mean?

17th Question. Yes.

Answer. Yes, sir.

18th Question. Where does that monument stand?

Answer. Well, it is right on this line, of course, on the Pennsylvania line, something over 48 rods from here.

19th Question. Is it east or west of the end of what is known as the old Maryland line?

Answer. It is east.

2540 20th Question. About how far east?

Answer. I would think about 40 rods, may be. I couldn't say exactly. It is 48 rods, a little over that, the 48 rods is between that.

21st Question. In your earliest recollection, which was regarded as the Maryland line?

Answer. Well, that was the old line, you know. The Marylanders used to say so, and old Tom Hammond, you know, he owned his land, and he said he wanted to run to the old line.

22nd Question. Was that monument that stands 48 rods east of the Maryland line, ever regarded as marking the Maryland line?

Answer. Well, some said that ought to be the corner there. They call it a mound there, dirt throwed up, you know.

23rd Question. Who did you say that marked the Maryland line?

Answer. Old John Cuppett, you know, and his son John.

24th Question. Where did he live?

Answer. He is dead. They are both dead.

25th Question. Where did they live?

Answer. Rignt out here about two mile from here on the mud pike.

26th Question. Did you ever hear anybody else say so?

Answer. Of course, they generally said so, the old people around.

26th Question. What did your father, Jacob Thomas, claim about that?

Answer. He said still that was the corner. He had bought some land, had a big dispute. At them times old Hammond wouldn't give it up, you know.

27th Question. Did your father, Jacob Thomas, claim that this 100 acres of land extended over to that old stone?

Answer. Well, had claimed it of course. He had claimed that was his land, of course, because he had bought it, you know.

28th Question. And Thomas Hammond claimed to run where?

Answer. He wanted to run to the old line.

29th Question. The old line, as it is now?

Answer. Yes. The 48 rods was in dispute.

30th Question. Did your father or you pay taxes to that old stone?

Answer. Yes, sir; we had paid taxes in Virginia, and I
2541 have receipts for it, old receipts that show for pretty near 100 years, there has been taxes paid for it.

31st Question. Well, then you said something about late years?

Answer. Late years that part of it was sold in Maryland. Jack Carr got it you know. It was sold in this way, that I had agreed—I thought I would get shut of trouble, you know—and I bought it of him.

32nd Question. So you bought it under the Maryland title, so as to have no trouble about it?

Answer. Yes, just in that way. I thought I wouldn't be bothered any more about it.

33rd Question. Do you know where the Michler line is that was run just before the war, where this monument stands west of you, on the Pennsylvania line?

Answer. Well, yes, I know.

34th Question. You know where that stone is?

Answer. Yes, I hauled that stone there myself. It was made out here and I went and hauled it over there.

35th Question. Now, does this 100 acres of land extend as far west as that stone?

Answer. No, sir.

36th Question. How near does it go to the stone?

Answer, Well, it must be some 60 rods, I suppose.

37th Question. Who owns that 60 rods in there?

Answer. Niner.

38th Question. What Niner?

Answer. Joseph.

39th Question. Where does he live?

Answer. He lives here in West Virginia, just below here, the next house.

40th Question. Now, in what county and state has this 100 acres of land been assessed and taxes paid on it, since you have known it?

Answer. It has been in Preston county, of course.

41st Question. In what state and county do you vote, and have you voted since you lived on it?

2542 Answer. I voted in Preston county.

42nd Question. Whose land lies along the old Maryland line, just south of you?

Answer. Taylor Umbel.

43rd Question. Is that on the Maryland side?

Answer. That is on the Maryland side.

44th Question. Who owns the land on the West Virginia side?

Answer. Lewis owns it now. I don't know his given name. I never asked any more than Lewis, and that is all I know about it.

45th Question. Have you got the original patent that was taken out for that land that Lewis now owns?

Answer. Yes, sir.

Witness here produces the original patent from the Commonwealth of Virginia to Harris Luddington, for 106 acres, situated in Preston county, on Scrub Glade Run, East Fork, dated November 29th, 1833, and recorded in book 82, page 445, a certified copy of which is to be filed with the deposition, marked Exhibit No. 20; and also a copy of the patent to Jacob Thomas, above mentioned, marked Exhibit No. 21.

46th Question. Did your father Jacob Thomas, ever own this 106 acres of land, south of you?

Answer. Yes, sir.

47th Question. To whom did he sell it?

Answer. He sold it to me, of course. The old deed was all put in one deed, you know.

48th Question. So that you owned the 100 acres, and the 106 acres, all at one time?

Answer. Yes, sir.

49th Question. Now, does that 106 acres border on the old Maryland line?

2543 Answer. Yes, sir; that goes up to the old line.

50th Question. Does it extend as far west as the new Michler line?

Answer. No; it don't go that far; not quite.

51st Question. Who now owns that piece of land?

Answer. That belongs to Antony on the west side?

52nd Question. Does Lewis own this 106 acres, in there?

Answer. Yes, he owns the 106.

53rd Question. Do you know who owns the land just south of this Lewis land, on the old Maryland line, on the West Virginia side?

Answer. Elijah Fike owns a piece that comes in there.

54th Question. This 106 acres that Lewis now owns—in what state and county has it always been assessed and taxes paid on it?

Answer. Always been in Preston county, and is yet.

55th Question. What line is now recognized by the citizens along here as the state line?

Answer. Well, I don't know about that. I cannot just tell, only about the Maryland side, of course they hold to the old line I guess. It must be that is the old line they hold to.

56th Question. The Maryland authorities only claim to what is known as the old Maryland line, now?

Answer. That is all. Yes, sir.

57th Question. Is there a public road leading through this land?

Answer. No, no more than my road, just a road that they go through sometimes. This road here in front goes through it.

58th Question. That road runs which direction, east or west?

Answer. It runs rather north and south here, pretty much.

59th Question. Is that road worked as a public road?

Answer. Yes, sir.

60th Question. What state works it?

Answer. That has been West Virginia. It is worked all the time. They work to the line here, the Pennsylvania line.

2544 61st Question. Is there a public school-house near here?

Answer. Not so very near. That has been something we needed, when I was raising children. I don't care much about it now though. No nearer than Cuppetts out here, two miles.

62nd Question. Did you deed this 100 acres of land to your son, Marshal Thomas?

Answer. Yes, he has got the deed, by fooling around.

63rd Question. Where does he live now?

Answer. He stays in Markleysburg, Pa. He boards there at the widow Umbel's.

64th Question. From whom did Lewis buy this 106 acres south of you?

Answer. He bought it of Bos. Dean, Ritchie bought from Bos. Dean, and Ritchie sold to Lewis.

65th Question. Who did Bos. Dean get it from?

Answer. He got it from my son Marshal, part of it, and part of it from Jacob Anderson, that is, the half of it.

66th Question. Who did your son Marshal get his interest in it from?

Answer. The way it was, you see, some of my heirs, you know, the oldest, had got hold of it, that was the way, and he got it from the heirs. He paid them off, you know. That is the way that piece was got, by fooling around.

67th Question. Do you know where the line was run through this property by Mr. Monroe, the surveyor in this case, last fall a year ago?

Answer. Yes.

68th Question. Is that east or west of the house you live in?

Answer. That is west.

And further this deponent saith not.

Signature of witness waived by stipulation of counsel.

Store of G. D. Evans, Clifton Mills, Grant District, Preston County, West Virginia, August 29th, 1896.

Present: George E. Price, attorney for the state of West Virginia.

G. D. Evans, a witness produced on behalf of the state of West Virginia, being duly sworn, deposes as follows:

2545 Examination by Mr. Price:

1st Question. What is your age?

Answer. I am 63, a little past 63.

2nd Question. Where do you reside?

Answer. At the present time here in Clifton Mills, Preston county, West Virginia.

3rd Question. Do you own a tract of land adjoining the boundary line between Maryland and West Virginia?

Answer. I do, sir, 220 acres.

4th Question. Where is that land located with reference to other lands?

Answer. Adjoining, you mean?

5th Question. Yes, sir.

Answer. Why, it adjoins the lands of John Taylor, and Samuel Lininger, and David F. Evans, and others.

6th Question. How long have you owned that land?

Answer. Now, really I couldn't tell, unless I would go to the title, just how many years, but my father and me have owned it—my father bought that property in the year 1845, in August, I think. It will be 51 years now last August.

7th Question. From whom did you buy it?

Answer. Isaac James.

8th Question. By whom was it taken up and patented?

Answer. By Isaac James, I believe. I think I am right on that.

9th Question. You have the original patent that was made for it, have you?

Answer. Yes, sir; I think so. I think there is no doubt about it.

A certified copy of said patent is to be filed with this deposition, marked Exhibit No. 22.

10th Question. Can you, without looking at your deeds, tell approximately how long you have owned this yourself?

Answer. I think about '58 or '59.

11th Question. Since 1858 or '59?

Answer. Yes, sir. That is as near as I can say without looking at the deeds.

2546 12th Question. Did you ever live upon that property?

Answer. Yes, sir; I lived upon that property until within about four—not quite four years ago, over three years ago.

13th Question. How long had you lived on it, until you left there, about three or four years ago?

Answer. Well, really, now, from when I was 12 years old until that time. I was partly raised on it. I wasn't there all the time,

but my family was there, my wife and my taxes, and everything else.

14th Question. Where is this tract of land with reference to what is known as the old Maryland line?

Answer. It runs right along the old Maryland line.

15th Question. It lies east or west of the line?

Answer. It lies west of it.

16th Question. Is the old Maryland line the eastern boundary of that piece of land?

Answer. Yes, sir. You might say it is the eastern boundary. It is a north and south line, you know.

17th Question. It does not extend over the Maryland line?

Answer. No, sir.

18th Question. Do you know where the line that was run by Lieutenant Michler, in 1859, is along there, what is called the new line?

Answer. Yes, I know where part of it is, and I have seen the gap. They cut a powerful sight of timber there. They made a mistake. That was my land, and since I disposed of 51 acres there. They got a little on one side and cut a gap, and then had to cut another gap. That is about all I know of that line.

19th Question. Do you know where it is?

Answer. Yes, sir.

20th Question. Does that line, that Michler line, pass through the tract of land that you now own?

Answer. No, sir. I did formerly own it, at that time. When it passed through I owned it.

21st Question. Does the tract that you own lie east or west of that new Michler line?

2547 Answer. East.

22nd Question. So that your tract of land lies between the old Maryland line, and this new Michler line?

Answer. Yes, sir. I never knew the line called by that name. It was called the new Maryland line.

23rd Question. In what state and county has that tract of land that you now own, been assessed, and taxed paid on it?

Answer. In the county of Preston, and state of West Virginia; but, now, mind you, I was assessed once—I don't know whether I was assessed more than once—I am sure they assessed me once in Maryland, the Maryland authorities, but I never paid any taxes, and never was called upon for taxes, and the census was taken there once by the Maryland authorities.

24th Question. During the time you lived upon that tract of land, in what state did you vote, and claim your citizenship?

Answer. In West Virginia. But I was like the rest of them. As soon as ever that line was run, they went there to vote, and I am sure I voted there once, but never afterwards. We found we were a little too fast, and we then fell back to our own state of course.

25th Question. That was the year after the line was run?

Answer. Yes, sir. Of course it was done through ignorance, but the ignorance was general as far as I could learn.

26th Question. What line has been recognized and accepted by the people along in that neighborhood, as the boundary line between the two states?

Answer. Well, there has been a little scrabble on that, when it come to road work, you know, but outside of that the old line was generally accepted. There was some contentious parties along that line, that didn't want to work. The fact of the business, I always thought about it was that they would lie to get out of working for either side, and kind of had that for a plea, but I believe most of them did work the road, and the old line was fa-ther considered, and not only considered indeed, but as I said before, we paid our taxes, but there was one case out here of a Friend, who wouldn't give his property in to the assessor. He had got his title transferred
2548 to a Maryland title, so I was told. Of course, I didn't see his title, you know. Old Mr. Pulliam was the assessor.

27th Question. Who owns the land just east of your tract, along the old Maryland line, lying in Maryland?

Answer. Well, it belongs to Thomas and Herring. I don't know which of the Thomases. The old gentleman did own it, but he sold to a couple of the boys, and they have been selling and trading to each other, until at the present time, I don't know really which of the Thomases does own that.

28th Question. Do they claim any further westward then the old Maryland line?

Answer. They claim to the line. Their title I believe calls to the line.

29th Question. They don't claim to go beyond the line?

Answer. No, sir. The man that sold to Thomas didn't claim himself farther than the line, from the fact that him and me had some trouble about 44 acres of land, that he run across the old line, and I offered to give him half of it and settle it, and he didn't do it, and I put it in court, and before it came to trial, he saw that there was no show for him at all. There was an order of survey executed, and he saw it was on the old line, and he gave up, and then he sold this to Thomas, you see, with the title calling for the line so I learn. So you see, he didn't claim farther then the line. He gave it up. The reason why I think I am right on that, as soon as this line was run that you run you know, the Thomases began to blow their horn, that they were going to take this land, that their title called for the line, don't you see?

30th Question. That is the line that was run by Mr. Monroe last fall a year ago?

Answer. Yes; or whenever it was.

31st Question. Do you know where the line passes through your property?

Answer. I know pretty near. I wasn't at home at the time, you know.

32nd Question. Is that east or west of the house that is on the land?

Answer. It is east of the house.

33rd Question. Who lives on your land there now?

Answer. George Taylor.

2549 34th Question. How long has he been there; ever since you left?

Answer. No, sir; He has been there pretty near two years I think.

35th Question. Who was there before him?

Answer. A. J. Glover.

36th Question. Who before Glover?

Answer. Well, my son was there a part of the year. He was there about six months.

37th Question. The house has been occupied by tenants of yours, since you left it?

Answer. Yes, sir, the house has been occupied by my tenants, ever since I left there.

38th Question. When was that dwelling house built?

Answer. I fear you are going to stall me, Mr. Price. I built that house, that present house, you know.

39th Question. Since the war?

Answer. Oh, yes, since the war. I couldn't only give a guess at that now really. I suppose 12 or 15 years ago. That is the best I could do now.

40th Question. Was there a house before that was built?

Answer. Oh yes.

41st Question. How long has there been a dwelling house occupied as a dwelling on that piece of land?

Answer. You are too hard for me now. I couldn't answer that, but to my knowledge, we have occupied a house there, excepting now just a little time, since I have lived there, since the fall of '45, and there was an old house wore out when we went there, prior, two that I know of, that had been, in the past. The house that we moved into then in '45 was comparatively—well a pretty new house, a hewed log house. At that time they were building these cabin houses, and these clapboard roofs. There was a great many of them then, and this was a hewed log house, and there was a part of an old house there then that had been occupied, an old cabin, and another one they had taken for a stable prior to that.

42nd Question. Prior to the running of the Michler line had there been any question, about which was the state boundary line, so far as you know?

2550 Answer. Well, I don't know. I told you, prior to the running of that line, as I told you, this disputed land, where I had trouble about 44 acres, they had run on to me from the Maryland line. That had been in question until me and that man fixed it up. I got an order of survey, and James Crawford out here executed it, and it was shown by that to be in Virginia, by the old line, and he didn't stand trial on it.

And further this deponent saith not.

Signature of witness waived by stipulation of counsel.

Grodon Hotel, Town of Kingwood, Preston County, West Virginia, August 29th, 1896.

U. N. ORR, a witness produced on behalf of the state of West Virginia, being duly sworn, deposes as follows:

Examination by Mr. PRICE:

1st Question. What is your age, Major?

Answer. 64.

2nd Question. And your residence?

Answer. Kingwood, Preston county, West Virginia.

3rd Question. Do you own any land adjoining the boundary line between Maryland and West Virginia, in Preston county?

Answer. Yes, sir.

4th Question. What quantity of land do you own?

Answer. 1647 acres.

5th Question. Along what portion of the line is it located?

Answer. It is right east of Terra Alta, and runs, was surveyed to me, to the old Maryland line.

6th Question. From whom did you purchase it?

Answer. I purchased from the administrators of Ulysis Ward, deceased.

6th Question. When did you purchase?

Answer. I purchased one tract of 350 acres in 1871, and I think about 1878 I purchased the remainder of the 1647 acres.

7th Question. Are your deeds recorded in the county court
2551 clerk's office of Preston County?

Answer. Yes, sir.

8th Question. Do you know of what original tract your land constitutes a part or a whole? Do you know by whom it was patented?

Answer. I think it was patented by a man by the name of Thomas.

9th Question. Do you know how many acres were in the original patent?

Answer. I couldn't say positive, but I think there was either five or six thousand acres. That is my recollection of it. I think about 6000 acres. The original tract was called the Westphalia tract.

10th Question. What distance does your land border on the old Maryland line?

Answer. I think it is about in the neighborhood of 500 poles.

11th Question. Whose land adjoins you on the south, along the old Maryland line? I mean, what land lies south of you along the old Maryland line, in West Virginia?

Answer. Well, the Washington farm lies south of me.

12th Question. Who owns it?

Answer. A man by the name of Washington, I reckon.

13th Question. I mean that borders on the line?

Answer. I couldn't tell you that. The Washington farm lays south of my land, a portion of it.

14th Question. But you are not sure what land lies right along the line south of you?

Answer. No, sir.

15th Question. Do you know what land lies north of you along the line?

Answer. The Wardwell tract, now belongs to Crane here in Kingwood.

16th Question. Do you know where the new Maryland or Michler line passes through your property?

Answer. Just about where it passes.

17th Question. Do you know what is the distance between the Michler line, and the eastern boundary of your land?

Answer. You mean the distance between the two lines?

18th Question. Yes.

2552 Answer. Well, I have passed over it frequently. My recollection is it is about a full quarter of a mile, if not more.

19th Question. In what county and state is your whole tract of land of which you have spoken assessed and taxes paid?

Answer. It is assessed, every acre of it, in Preston county, and I have paid taxes ever since I purchased, for every acre of land my deed calls for, up to the Maryland line in that county.

20th Question. None of your land is assessed in Maryland?

Answer. Not an acre of it.

21st Question. So far as you know has it always been assessed in Preston county for taxes?

Answer. I think so, sir.

22nd Question. State whether or not you have in your possession the deeds you have obtained for this land?

Answer. Yes, sir.

Certified copies of said deeds are to be filed with this deposition, marked Exhibit No. 23, and Exhibit No. 24.

23rd Question. Do you know anything about who owns the military lots in Maryland, east of you?

Answer. I don't know anything about them, only hearsay.

24th Question. What do you know by hearsay?

Answer. I have heard that there was military lots over there, along the line in Maryland, but that is all I know about it.

And further this deponent saith not.

Signature of witness waived by stipulation of counsel.

And no other witnesses appearing, the taking of these depositions is closed.

JULIUS K. MONROE,
Notary Public.

2553 STATE OF WEST VIRGINIA,
County of Preston, To-wit:

I, Julius K. Monroe, a Notary Public of the county and state aforesaid, do hereby certify that the foregoing witnesses, Lloyd Dawson, Simon D. Whetzell, Peter F. Nines, John R. Bowman, J.

H. Bowman, Daniel Bowman, Parker Ashby, Dorsey L. Ashby, Garrett T. White, William H. De Berry, Wesley De Berry, Isaac H. Smith, George R. Freeland, Notley B. Browning, Michael E. Feather, J. W. Feather, J. Z. Feather, Amanda J. Reckard, Sarah Ann Teets, William A. Teets, Henry P. Sines, William Sisler, Albert J. Savage, Melvil-e G. Friend Marshall Freind, John Taylor, Sylvanus Fike, George Taylor, Lucinda Fearer, Joseph Guthrie, Charles T. Van Sickle, George W. Van Sickle, William M. Fike, Jacob A. Fike, Abraham J. Thomas, G. D. Evans, U. N. Orr and Ethbell Falkenstein were duly sworn, and their depositions taken before me, at the several times and places herein before mentioned pursuant to stipulation of counsel hereto attached.

In testimony whereof I have hereunto signed my name, and affixed my official seal, this 29 day of August, 1896.

[SEAL.] JULIUS K. MONROE,
Notary Public.

2554 *Costs of Depositions.*

Lloyd Dawson,	Witness,	paid by	defendant's	attorney		$1.00
Simon D. Whetzell	"	"	"	"	"	1.00
Peter F. Nines	"	"	"	"	"	1.00
Parker Ashby	"	"	"	"	"	1.00
Dorsey L. Ashby	"	"	"	"	"	1.30
William H. De Berry	"	"	"	"	"	1.00
Wesley De Berry	"	"	"	"	"	1.00
Isaac Smith	"	"	"	"	"	1.00
George R. Freeland	"	"	"	"	"	1.00
Henry P. Sines	"	"	"	"	"	1.00
William Sisler	"	"	"	"	"	1.00
Albert A. Savage	"	"	"	"	"	1.00
Julius K. Monroe, Notary public	"	"	"	"		
W. B. Parkhurst, stenographer, ten days taking depositions in shorthand, at $5. per day						50.00
W. B. Parkhurst, transcribing depositions, 45,000 words, at 15 cents per hundred (3 copies)						67.50

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2556 In the Supreme Court of the United States.

STATE OF MARYLAND
vs.
STATE OF WEST VIRGINIA.

Exhibits filed with depositions taken on behalf of the Defendant from August 20th to August 29th, 1896, in Preston County, West Virginia.

EXHIBITS Nos. 1 to 24.

Supreme Court U. S. No. 1 Original, Oct. Term 1907. Maryland *v.* West Virginia, Filed Oct. 15, 1907. Office Supreme Court, U. S. Filed Oct. 15, 1907, James H. McKenney, Clerk.

2557 This Indenture made this 11th day of September in the year of our Lord One Thousand Eight hundred and forty six, between William Chisholm of the County of Allegheny and State of Maryland of the first part and James C. Dawson of the County and State aforesaid of the second part; Witnesseth: that the said William Chisholm for and in consideration of the sum of Six hundred and fifty dollars to him in hand paid by the said James C. Dawson have

granted, bargained and sold and by these presents do grant, bargain and sell, alien, enfeoff, release and confirm unto the said James C. Dawson his heirs and assigns forever all that tract or parcel of land situate and lying in Preston County, Virginia, containing two hundred and fourteen acres more or less, it being the same that was conveyed to the said William Chisholm by deed from Merador Goff. The said tract now conveyed or intended to be conveyed is contained in the following metes and bounds excepting the grave-yard or burying ground containing one fourth of an acre, is reserved and not conveyed. Beginning at the Youghigheny river at the Maryland line, and running with a line of fence it being the division line between said tract and the Mill tract, N. 77½ W. 215 poles to the old road leading to Heckart's, thence with said road S. 58 W. 94 poles to stone in a small run, thence by and with the meanders of said run S. 76 E. 108 poles to the mouth of said run, thence E. 108 poles to the Maryland line and with said line N. 128 poles to the beginning. To have and to hold the above described premises with the appurtenances to the same belonging or in any wise appertaining to the only proper use, benefit and behoof of him the said James C. Dawson, his heirs and assigns forever. And the said Wm. Chisholm for himself and his heirs do covenant to and with the said James C. Dawson, his heirs and assigns that at the time of sealing and
2558 delivering these presents he was seized of a good, perfect and indefeasible estate of inheritance in fee simple in the above premises, free from all claims, liens or incumbrances and that he hath good right to and authority to convey the same in manner and form aforesaid and that he will warrant, secure and forever defend the said premises to the said James C. Dawson, his heirs and assigns free from the claim or claims of all persons whatsoever.

In testimony whereof the said William Chisholm has hereunto signed his name and affixed the seal the day and year above written.

WILLIAM CHISHOLM. [SEAL.]

PRESTON COUNTY, *To wit:*

We, Tewalt Shafer and Ezekiel Totten, Justices of the Peace in and for said County in the State of Virginia, do hereby certify that William Chisholm party to the within deed personally appeared before us in our County aforesaid and acknowledged the same to be his act and deed and desired us to certify the said acknowledgment to the Clerk of the County Court of the County aforesaid in order that the said deed may be recorded.

Given under our hands and seals this 11th day of September, 1846.

TEWALT SHAFER. [SEAL.]
EZEKIEL TOTTEN. [SEAL.]

VIRGINIA:

Be it remembered that on the 14th day of September 1846 this deed was produced to me, Jno. P. Byrne Clerk of the County Court of Preston, in my office duly certified and admitted to record.

JNO. P. BYRNE, *Clerk.*

2559 WEST VIRGINIA, *ss:*

I, Henry Startzman, Recorder of the County of Preston, certify that the foregoing is an original deed formerly recorded in my office in Book No. 7 Page 275 which book having been destroyed by fire, on application of the grantee the said deed authenticated as per certificates thereon endorsed is thereupon recorded anew.

Given under my hand this 12th day of July 1869.

HENRY STARTZMAN, *Recorder.*

A copy from the record.
Teste:

J. AMI MARTIN, *Clerk.*

Endorsed: Wm. Chisholm to Jas. C. Dawson. Deed, Copy. Exhibit No. 1. Copy &c. 90¢.

This Deed made, this 20th day of April in the year eighteen hundred and eighty nine between Wm. H. Glover and Mary, his wife of Terra Alta, Preston County West Virginia, The Grantors; and John R. Bowman and Daniel R. Bowman of Brookside, Preston County West Virginia the grantees,

Witnesseth, that in consideration of Six hundred dollars to be paid as follows; One hundred and fifty dollars on the 20th day of April 1890, One hundred and fifty dollars on the 20th day of April 1891, One hundred and fifty dollars on the 20th day of April 1892, and one hundred and fifty dollars on the 20th day of April 1893; the grantees having executed their several notes for same, bear-
2560 ing interest from and dated April 20th, 1889, and the said grantors do hereby retain a lien on the said land hereby conveyed to the said grantees for the deferred payments of the purchase money of six hundred (with its interest) dollars above mentioned, The said Grantor- do grant unto the said grantee-, all of a certain tract of land, situate in Union District, in the County of Preston, State of West Virginia, on the waters of Youghiagheny river, and bounded as follows, towit:

Beginning at a stake and pointers (formerly a W. O. and Maple corner to the West tract) thence S. 52¼° E. 45 4/5 poles to a Pine stump, thence N. 55¾° E. 49 poles to a Stake in a field, thence S. 86½° E. 78 4/5 poles to a Cherry and pointers on West bank of Yough river thence crossing said river S. 86° E. 130 poles to a pine in the Maryland line, thence with said line, bearing corrected S. 3° W. 116 poles to a stake, corner to the Irish tract, thence with a line of said tract, N. 87¼° W. 214 poles to a pine one the East bank of Yough river, thence crossing said river and Rhine creek S. 53° W. 28 poles to a birch, thence S. 56¼° W. 34 poles to a pine on south bank of Rhine creek, thence recrossing said creek, N. 14° W. 82 poles to a Dead pine, thence S. 89¾° W. 16 poles to a Sugar, thence N. 17° E. 82 2/5 poles to the beginning, containing two hundred and eighteen (218) acres, be the same more or less being the same was conveyed to the said grantor- by J. Ami Martin, Clerk of the County Court of Preston County, by deed now of record in

Deed Book No. 64 page 301 of the records of the said county of Preston, and the said grantors covenant that they have the right to convey as aforesaid the said tract of land to the said grantees, to have and to hold the said real estate, with its premises and appurtenances unto the said John R. and Daniel R. Bowman,

2561 Witness the following signatures and seals this 27th day of June, 1889

WM. H. GLOVER. [SEAL.]
MARY GLOVER. [SEAL.]

STATE OF WEST VIRGINIA,
County of Preston, ss:

I Wm. A. McGinnis a Notary Public for said County, certify that Wm. H. Glover whose name is signed to the foregoing deed dated April 20th 1889 has this day acknowledged the same before me in said County.

Given under my hand this 27th day of June 1889.

[SEAL.] WM. A. McGINNIS,
Notary Public.

STATE OF WEST VIRGINIA,
County of Preston, ss:

I, Wm. A. McGinnis a Notary Public of the County aforesaid do certify that Mary Glover, the wife of Wm. H. Glover, whose name is signed to the above, bearing date on the 20th day of April 1889, personally appeared before me in the County aforesaid and being examined by me privily and apart from her said husband and having the said writing fully explained to her, she, the said Mary Glover, acknowledged the said writing to be her act, and declared that she had willingly executed the same, and does not wish to retract it.

Given under my hand this 27th day of June 1889.

[SEAL.] WM. A. McGINNIS,
Notary Public.

2562 STATE OF WEST VIRGINIA,
County of Preston, ss:

I, Julius K. Monroe, a Notary Public, in and for said County do certify that the foregoing is a true copy of the original Deed from Wm. H. Glover & wife to Jno. R. & D. R. Bowman, and that the same was filed for record in the office of Clerk of the County Court of Preston Co. Aug. 25th 1896.

Given under my hand and seal this 30th day of November, 1896.

[SEAL.] JULIUS J. MONROE,
Notary Public.

Endorsed on margin: W. H. Glover to J. R. & D. R. Bowman. Deed. (Exhibit 2.)

John Bacorn, 500 Acres, Monongalia Exd.

Henry Lee, Esquire, Governor of the Commonwealth of Virginia, to all to Whom these Presents shall Come, Greeting:

Know Ye, That by virtue of a pre-emption Warrant Number 2267 issued the 16th day of October 1782 there is granted by said Commonwealth unto John Bacorn Assignee of John Simpson a certain tract or parcel of land containing 500 Acres by survey bearing date the 19th day of May 1788 lying and being in the County of Monongalia adjoining the east and north end of Jesse Ashley's survey and adjoining the *m*aryland line and bounded as followeth to wit. Beginning at a birch tree standing on west side of the
2563 State road and running thence S. 40° E. 49 poles to a cherry and Maple thence N. 20° E. 40 poles *40 poles* to 2 cherry trees corner to Jessie Ashley's land thence with said Ashley's line E. 116 poles to pointers thence S. 308 poles with another of said Ashley's line to 2 cherry trees thence leaving Ashley's line N. 80° E. 60 poles to a cherry tree thence N. 600 poles to a service and thorn tree (74¼) † thence S. 47¼° W. 243 poles to pointers thence S. 3¼° E. 237 poles to the beginning with its appurtenances. To have and to hold the said Tract or Parcel of Land, with its appurtenances, to the said John Bacorn and his heirs forever.

In witness whereof, The said Henry Lee, Esquire, Governor of the Commonwealth of Virginia, hath hereunto set his hand and caused the Lesser Seal of the said Commonwealth to be affixed, at Richmond, on the 18th day of May in the year of our Lord one thousand 7 hundred and 93 and of the Commonwealth the 17th.

[SEAL.] HENRY LEE.

W. S. H.

STATE OF WEST VIRGINIA,
Auditor's Office, City of Charleston, To wit:

I, L. M. La Follette, Auditor of the State of West Virginia, do hereby certify that the foregoing is a true copy of a paper, purporting to be a grant from the State of Virginia to John Bacorn dated the 18th day of May, 1793, on file in said Auditor's office among the certified copies of records received from the office of the Register of the Land office at Richmond, Virginia, and deposited in the said Auditor's office, under Acts of the Legislature of West Virginia, passed February 24th, 1893, and February 20th, 1897.

Given under my hand and official seal, at Charleston, West
2564 Virginia this 12th day of September, 1899.

[SEAL.] L. M. LA FOLLETTE, *Auditor.*

Endorsed: Com. of Virginia To John Bacorn Patent May 28, 1793 500 Acres Exhibit No. 3.

[† In pencil in copy.]

James Wood, Esquire, Lieutenant Governor of the Commonwealth of Virginia, to All to Whom these presents shall come, Greeting:

Know Ye, that by virtue and in consideration of part of a Land Office Treasury Warrant Number Fifteen Thousand five hundred and Seventy seven, issued the third day of May One thousand seven hundred and eighty three there is granted by the said Commonwealth unto Francis and William Deakins Ass'ees of William Deakins a certain Tract or Parcel of Land, containing Five hundred acres, by Survey bearing date the first day of December one thousand seven hundred and eighty seven, lying and being in the County of Monongalia, between the Pine Swamps of Muddy Creek and the head of Buffalo Run, West of Yohogania River and bounded as followeth to wit: Beginning at the end of thirteen poles on the fourteenth line of a Tract of Land called Elder Spring originally granted and Patented by the State of Maryland unto the aforesaid Francis Deakins, and running thence South fifty one degrees East forty three poles, North Seventy seven degrees East, Eighty Poles, North forty one degrees East, forty poles, North seven degrees West Seventy six poles to a bounded White oak and black Gum, they being the beginning trees of the aforesaid Tract of Land called Elder Spring—thence North six degrees East Sixty four poles, East
2565 ninety poles South four hundred and Twenty four poles West two hundred and ninety five poles thence by a straight line to the beginning with its appurtenances; To Have And To Hold the said tract or parcel of land with its appurtenances, to the said Francis and William Deakins, and his heirs forever—

In Witness whereof the said James Wood Esquire, Lieutenant Governor of the Commonwealth of Virginia, hath hereunto set his Hand, and caused the lesser Seal of the said Commonwealth to be affixed at Richmond, on the ninth day of September in the Year of our Lord, One Thousand seven hundred and ninety, and of the Commonwealth the fifteenth—

[SEAL.] JAMES WOOD.

Francis and William Deakins are Intitled to the within mentioned Tract of Land.

JOHN HOWE,
Reg. L. Off.

STATE OF WEST VIRGINIA,
County of Preston, ss:

I Julius K. Monroe a Notary Public in and for said County of Preston, do certify that the foregoing is a true copy of an original Patent Granted to Francis and William Deakins from the Commonwealth of Virginia, bearing date the Ninth day of September, Seventeen hundred and ninety Having the above Land Office endorsement on its back, also: "Francis & William Deakins 500 Acres, Monongalia County" & now in possession of Notley Browning, Cranesville W. Va.

Given under my hand and Seal this 9th day of April 1897—

[SEAL.] JULIUS K. MONROE,
Notary Public.

Endorsed: Copy Francis and Wm. Deakins 500 Acres Monongalia County, Exhibit No. 4 No. 15 Thos. P. Ray is recorder of the Land Office, Morgantown Virg. Purchased by John Ellicott from the Heirs of David Stewart.

2566 This Deed made this 24th day of November in the year 1875, between Smith Crane, Special Commissioner of the first part and Notly B. Browning of the second part.

Whereas, the said Special Commissioner in pursuance of the authority vested in him by a decree of the Circuit Court of the County of Preston, made on the 12th day of April 1873, in a suit in Equity there in pending in which the said Smith Crane surviving administrator of John Crane deceased was plaintiff and Nancy Crane widow of said decedent and his children and heirs at law and William G. Brown were defendants, did on the second day of November 1874 sell the real estate hereinafter mentioned and conveyed according to the terms and conditions required by said decree, at which sale the said Notley B. Browning became the purchaser, to wit: of lot No. 7 for the sum of two hundred and twenty five dollars and of lot No. 8½ for the sum of one hundred and eighty five dollars; in all, four hundred and ten dollars, which sum has been paid in full to said Commissioner. And the said Court having by a subsequent decree made in the case on the 8th day of April 1875 confirmed the said sale and directed a deed for the same real estate to be made to the said Notly B. Browning by the said Commissioner.

Now, therefore, this deed witnesseth: that the said Smith Crane, Special Commissioner as aforesaid has this day granted and conveyed unto the said Notly B. Browning the following described real estate situate in Pleasant District in the County aforesaid and bounded and described as follows: Lot No. 7: Beginning at two pitch pines, corner to Lot No. 1 (this day conveyed to said Browning by said Special Commissioner) thence with a line of said Lot No. 1 N. eighty degrees, west three hundred and twenty poles to the pitch pine, corner to lots Nos. 1 & 2; thence with two lines
2567 of lot No. 6 (now owned by John E. Otto) viz: N. one degree E. two hundred and twenty six poles to a stake; thence E. fourteen poles to a line of the "Carey survey" thence with a line of the same E. two hundred and ninety five poles to pointers by rock in the old Maryland and Virginia line; thence with the latter line S. two hundred and seventy six poles to the place of beginning, containing four hundred and eighty seven acres of land; being a part of the Henry Banks survey of eight thousand acres and is designated and known on the plat and report of survey filed in the cause aforesaid as lot No. 7. Lot No. 8½ (hereby conveyed) is bounded as follows: (being that portion of the "Carey survey" lying between the old and new Maryland and Virginia line;) Beginning at a gum, corner to the "Elder Spring tract" and also a corner to the Henry Deahl survey; thence S. thirty seven degrees E. forty six poles to a double white oak (standing on the south side of the Selbysport road;) thence S. seventy seven degrees W. sixty eight poles to stake in the old Maryland and Virginia line; thence with the same S.

three hundred and eighty poles to pointers by rocks, corners to said lot No. 7; thence with a part of a line of lot No. 7 W. one hundred and fifty poles to the new Maryland and Virginia line, (as run by Lieut. Michler in 1859;) thence with said new line (being a line of lot No. 8 now owned by George H. Rodeheaver) to the "Elder Spring tract; thence with two lines and a part of another line of the said "Elder Spring tract" viz: N. seventy seven degrees E. fifty two poles, N. forty one degrees E. forty poles, N. seven degrees W. Ninety poles to the beginning, containing two hundred and forty two acres, designated and known on the plat and report of survey aforesaid as lot No. 8½; and whereas, the said Smith Crane has by virtue of a certain tax deed as well as deed from James Carey and others denied title to said land. Whereupon, in pursuance
2568 of a decree of the Circuit Court aforesaid and for the purpose of perfecting the title to said land in the said Browning, the said Smith Crane in his own right hereby grants with Special Warranty unto the said Browning all his interest whether legal or equitable in the said lands, denied through or under the said two deeds, to have and to hold the said real estate and premises with all the interest of the said Smith Crane (in his own right as aforesaid) together with all the right, title and interest of the widow and children and heirs at law of the said John Crane deceased, unto the said Notly B. Browning his heirs and assigns forever.

Witness the following signature and seal.

SMITH CRANE, [SEAL.]
Special Commissioner.

WEST VIRGINIA, *ss:*

On this 24th day of November 1875, the foregoing deed was acknowledged before me in my office by the above named Smith Crane whose name is signed thereto, and admitted to record.

Teste:

HENRY STARTZMAN,
Clerk County Court, Preston County.

A copy from the record.

Teste:

J. AMI MARTIN, *Clerk.*

Endorsed: Smith Crane Comr. To N. B. Browning Deed Copy Exhibit No. 5. Copy, &c., 1.00.

2569 This deed made this 24th day of November in the year 1875, between Smith Crane, Special Commissioner of the first part, and Notly B. Browning of the second part:

Whereas, the said Special Commissioner in pursuance of the authority vested in him by a decree of the Circuit Court of the County of Preston made on the 12th day of April 1873 in a suit in Equity therein pending in which the said Smith Crane surviving administrator of John Crane deceased was plaintiff and Nancy Crane widow of said decedent and his children and heirs at law and William G.

Brown were defendants, did on the third day of November 1873, sell the real estate hereinafter mentioned and conveyed according to the terms and conditions required by said decree at which sale the said Notley B. Browning became the purchaser to wit: of lot No. 1 at the price of four hundred and ten dollars and of lot No. 2 at the price of four hundred and ninety dollars, in all nine hundred dollars, which has been paid in full to said Commissioner. And the said Court having by a subsequent decree made in the case on the 14th day of April 1874 confirmed the said sale and directed a deed for the said real estate to be made to the said Notly B. Browning by the said Commissioner; Now, therefore, this deed witnesseth: that the said Smith Crane, Special Commissioner as aforesaid has this day granted and conveyed unto the said Notly B. Browning the following described real estate situate in Pleasant District in the County aforesaid, and bounded and described as follows: Lot No. 1;—Beginning at pointers in the old Maryland and Virginia line and in the fourth line of the "Diadem survey" (and twelve poles from the fourth corner of "Diadem in the line running south eighty three degrees west) and running thence with the said Maryland and
Virginia line N. five hundred and sixteen poles (crossing
2570 white Rock Run) to two pitch pines, (standing about six and one half poles north of said Run;) thence N. eighty degrees W. three hundred and twenty poles to pitch pine, corner to a parcel of land now owned by John E. Otto; thence S. one degree W. (with a line of lot No. 2 hereby conveyed) four hundred and seventy two poles to a stone pile and pointers corner to said lot No. 2: thence with a line of the same south eighty three degrees E. forty three poles to pointers, corner to the Widow Metheney's farm, same course continued (with her line) fifty five poles to a stone on some high rocks; thence South twenty five degrees, E. (with another of her lines) one hundred an- fourteen poles to a white oak, in the line of the "Diadem" survey; thence reversing a part of the fourth line of the "Diadem" viz: N. Eighty three degrees E. one hundred and eighty five poles to the beginning, containing one thousand and nine acres of land; being a part of the "Henry Banks survey of eight thousand acres, (and is designated and known on the plat and report of survey filed in this cause aforesaid, as lot "No. 1." Lot No. 2, herewith conveyed is bounded and described as follows:

Beginning at a pitch pine the third corner to said lot No. 1 and running thence S. fifty five degrees W. with a line of Jackson P. Rodeheaver and Arnest A. Rechat (crossing the head waters of Beaver Creek) four hundred and twenty fi-e poles to a stone pile in a line of the Wakefield survey (now Reckert's); thence with three lines of the same viz: S. forty degrees E. Thirteen poles to a rock and pointers; S. thirty five degrees W. two hundred and eighteen poles to stone pile and pointers, N. sixty two degrees W. one hundred and twenty poles to three chestnuts on a cleft of rocks (in the original line of the said Banks survey;) thence with the Banks line
S. forty seven degrees E. one hundred and ten poles to a
2571 stone heap, corner of said Banks survey, (originally a white oak) thence S. six poles to a stone pile in the Joseph Forman

line of a tract of sixty acres, (now Washington Hartman's heirs;) thence with two lines of the same viz: S. thirty eight degrees E. one hundred and seventeen poles to a stone pile and pointers, S. forty six degrees W. forty eight poles to two white oaks standing by the "Cuppett road" thence E. ninety six poles to a white oak corner to the Jacob Wolf survey of 156 acres (now Zalmon Cuppetts); thence with two of Cuppett's lines, viz: S. forty one degrees E. ninety eight poles to a hickory bush in the edge of Cuppett's field, S. sixty three degrees E. twenty poles to a stake in the edge of Cuppett's field; thence N. eighty six poles to a stone pile and pointers; thence east one hundred and fifty five poles to a stone pile; thence S. forty degrees E. fifty four poles to David Wolf's corner, (between two rocks;) thence with four of said Wolf's lines, viz: N. Thirty one degrees E. thirty nine poles to a birch on a high rock; thence N. sixty five and one half degrees E. twenty three poles to a chestnut oak, N. eighty four degrees E. fifty five poles to a chestnut N. sixty three degrees E. thirty four and one half poles to a chestnut oak corner to said Wolf and the Widow Metheny, thence N. fifteen degrees E. one hundred and twenty five poles to pointers corner to said lot No. 1; thence reversing two lines of lot No. 1, viz: N. eighty three degrees W. forty three poles to a stone pile and pointers (corner to said lot No. 1;) thence north one degree E. four hundred and seventy two poles to the beginning containing twelve hundred and ten and one three fourths of an acre of land; being also a portion of the said Banks survey of eight thousand acres; and is desig-
2572 nated and known on the plat and report of survey aforesaid as lot No. two (2); and whereas, the said Smith Crane has by virtue of a certain tax title an undivided interest in the line hereby conveyed; whereupon in pursuance of a decree of the Circuit Court aforesaid and for the purpose of perfecting the title to said land in the said Browning the said Smith Crane (in his own right) hereby grants with Special Warranty unto the said Browning all of his said undivided interest whether legal or equitable in and to the real estate hereby conveyed.

To have and to hold the said real estate and premises with all the undivided interest of the said Smith Crane (in his own right) as aforesaid together with all the right, title and interest of the widow and children and heirs at law of the said John Crane deceased unto the said Notly B. Browning his heirs and assigns forever.

Witness the following signature and seal.

SMITH CRANE, [SEAL.]
Special Commissioner.

WEST VIRGINIA, *ss:*

On this 24th day of November 1875 the above deed was acknowledged by the above named Smith Crane before me Henry Startzman Clerk of the County Court of Preston County in my office and admitted to record.

Teste: HENRY STARTZMAN, *Clerk.*

A copy from the record.

Teste: J. AMI MARTIN, *Clerk.*

2573 Endorsed: Smith Crane Com'r to N. B. Browning. Deed. Copy. Exhibit No. 6 Copy &c. -1.25.

Whereas John Crane deceased did in his life time to wit: on the 14th day of May 1850, sell to Edmund Kelley (since dec'd) a certain tract or parcel of land hereinafter described at the price of two dollars per acre for the first seventy five acres and three dollars per acre for the residue and executed his title bond, binding himself and heirs to execute to said Kelley a good and sufficient deed for the same, between the first and second payments but the said Crane departed this life without having executed said deed; and whereas, the said bond having been assigned to William Hauger and he having paid to the administrator of said Crane the residue of the purchase money due on said land is therefore entitled to his deed.

Whereupon this deed, made the 31st day of July in the year 1861 between Nancy Crane widow of said John Crane deceased, Smith Crane and Mary C. Crane his wife, Samuel Crane and Abigail Crane his wife, Henry Albright and Elizabeth his wife, Elisha Crane and Mary Ann his wife, Allen D. Crane and Hannah E. Crane his wife, John E. Otto and Jane his wife, Jacob S. Hyde and Amanda his wife, Jacob W. Crane and John B. Crane children and heirs at law of the said John Crane deceased, Grantors of the first part and the said William Hauger Grantee of the other part,

Witnesseth: that in consideration of the assignment of the said title bond to the said Hauger and the payment of the residue of purchase money as aforesaid the receipt of which is hereby
2574 acknowledged the said Grantors do grant unto the said Grantee all the following described tract or parcel of land lying in the County of Preston in the State of Virginia near the village of Cranesville adjoining the lands belonging to said heirs and being the same upon which Julia Ann Kelley widow of the said Edmond Kelley dec'd now resides, containing by estimation two hundred and egghty acres and bounded as follows, towit: Beginning at a pine and maple on the west side of Muddy Creek and running thence N. eighty nine degrees west three hundred and ten poles to a stake corner to Wm. Hayes, thence N. 1° E. 30¾ po. to pointers, corner to land sold to Harrison Sypolt thence N. fifty three degrees W. forty three poles to pointers thence N. thirty and a half degrees E. one hundred and three poles to a small chestnut, thence south eighty nine degrees E. two hundred and ninety four poles to stake, thence S. one degree W. one hundred and forty three and a half poles to the beginning with its appurtenances.

And the Grantors covenant that they have the right to convey the said land to the said Grantee that they will warrant generally the property hereby conveyed to the extent of their respective inter-

ests or shares in the real estate of the said John Crane dec'd as his heirs at law as aforesaid.

Witness the following signatures and seals.

	NANCY CRANE.	[SEAL.]
	JOHN E. OTTO.	[SEAL.]
	JANE OTTO.	[SEAL.]
	JACOB S. HYDE.	[SEAL.]
	AMANDA HYDE.	[SEAL.]
	JACOB W. CRANE.	[SEAL.]
	JNO. B. CRANE.	[SEAL.]
2575	ALLEN D. CRANE.	[SEAL.]
	HANNAH E. CRANE.	[SEAL.]
	SAMUEL CRANE.	[SEAL.]
	ABIGAIL CRANE.	[SEAL.]
	HENRY ALBRIGHT.	[SEAL.]
	ELIZABETH ALBRIGHT.	[SEAL.]
	SMITH CRANE.	[SEAL.]
	MARY C. CRANE.	[SEAL.]
	ELISHA CRANE.	[SEAL.]
	MARY ANN CRANE.	[SEAL.]

STATE OF VIRGINIA,
County of Preston, To wit:

I, Smith Crane a Notary Public in and for the County of Preston in the State of Virginia do certify that Nancy Crane, John E. Otto, Samuel Crane Henry Albright, Jacob S. Hyde Jacob W. Crane and John B. Crane whose names are signed to the writing hereto annexed bearing date on the 31st day of July 1861, have severally acknowledged the same before me in my county aforesaid. I also further certify that Jane E. Otto the wife of John E. Otto, Abigail Crane the wife of Samuel Crane, Elizabeth Albright the wife of Henry Albright and Amanda Hyde the wife of Jacob S. Hyde whose names are signed to the writing aforesaid bearing date as aforesaid, personally appeared before me in the County aforesaid and being respectively examined by me privily and apart from their said husbands and having the writing aforesaid fully explained to them they the said Jane Otto, Abigail Crane, Elizabeth Albright and Amanda Hyde severally acknowledged the said writing to be their act and declared that they had willingly executed the same and do not wish to retract it.

2576 Given under my hand this 31st day of July in the year 1861.

SMITH CRANE,
Notary Public.

STATE OF ILLINOIS,
County of Logan, To wit:

I, Fr. C. W. Koehnte a Notary Public for the County of Logan in the State of Illinois do certify that Elisha Crane whose name is signed to the writing hereto annexed bearing date on the 31st day

of July 1861 has acknowledged the same before me in my County aforesaid. I also certify that Mary Ann Crane the wife of Elisha Crane *a*hose names are *s*igned to the said writing bearing date as aforesaid personally appeared before me in the County aforesaid and being examined by me privily and apart from her said husband and having the writing aforesaid fully explained to her she, the said Mary Ann Crane acknowledged the said writing to be her act and declared that she had willingly executed the same and does not wish to retract it.

Given under my hand this 9th day of September 1861.

FR. C. W. KOEHNTE,
Notary Public.

VIRGINIA, *Marion County, To wit:*

I, Sylvanus W. Hall a Notary Public in and for the County aforesaid do certify that Allen D. Crane whose name is signed to the writing above bearing date the 31st day of July 1861 has acknowledged the same before me in my said County aforesaid. And I do further certify that Hannah E. Crane wife of the said Allen D. Crane whose names are signed to the said writing personally appeared before me in my County aforesaid and being examined by me privily and apart from her husband and the writing
2577 aforesaid having been fully explained to her she, the said Hannah E. Crane acknowledged the same to be her act and deed and that she had willingly signed and executed the same and does not wish to retract it.

Given under my hand this 2nd day of December 1861.

SYLVANUS W. HALL,
Notary Public.

VIRGINIA, *ss:*

On this 12th day of December 1861 the annexed deed bearing date on the 31st day of July 1861 was legally acknowledged before me Jacob W. Crane Deputy for Smith Crane Clerk of the County Court of Preston County in my office by Smith Crane and Mary C. Crane his wife whose names are signed to said writing dated as aforesaid. She, the said Mary C. Crane being first examined by me privily and apart from the said husband and having said writing fully explained to her acknowledged the said writing to be her act and declared that she had willingly executed the same and that she does not wish to retract it. Whereupon the said writing being duly certified as to the other Grantors therein named, the same is thereupon admitted to record.

Given under my hand this the day and year first aforesaid.

JACOB W. CRANE,
D. Clerk.

WEST VIRGINIA, *ss:*

I, J. Ami Martin Clerk of the County Court of Preston County, do certify that the foregoing deed is an original deed formerly recorded in my office in book No. 16 pages 366-7-8-& 9 but said record

having been destroyed by fire at the instance of —— —— it is recorded anew.

2578 Given under my hand this 19th day of December 1878.

J. AMI MARTIN, *Clerk.*

A copy from the record.
Teste:

J. AMI MARTIN, *Clerk.*

Endorsed: John Crane's hr's. To Wm. Hauger Deed Copy Exhibit Mo. 7. Copy &c 1.45.

This deed made this 1st day of April 1868 between Philip Dennis and Mary his wife of the first part Grantors, and Joseph C. Feather of the second part, all of the County of Preston and State of West Virginia, Witnesseth: that for and in consideration of the sum of seventeen hundred dollars Six hundred dollars of which is paid and the receipt thereof is acknowledged, the residue to be paid in payments as follows, to wit: Two hundred dollars on the 1st day of April 1869, Two hundred dollars on the 1st day of April 1870, Two hundred dollars on the first day of April 1871, Two hundred dollars on the 1st day of April 1872, Two hundred dollars on the 1st day of April 1873, and the remainder One hundred dollars on the 1st day of April 1874 to secure the payments of which deferred payments a lien is hereby retained upon the hereinafter described premises; the said Grantors do grant with covenants of General Warranty the following described piece or parcel of land lying and being

2579 in the County of Preston in what is commonly called the Pineswamp Settlement and near Cranesville to wit: Six undivided ninth parcels parts of a tract of 280 acres one owned by Edmund Kelley and by him conveyed to William Hauger and by the heirs of said William Hauger to the said Dennis. And the Grantee covenants that they have the right to convey the premises aforesaid to the said Grantee and that the same is free from all incumbrances.

Witness the following signatures and seals.

PHILIP DENNIS. [SEAL.]
her
MARY x DENNIS. [SEAL.]
mark

STATE OF WEST VIRGINIA,
Township of Grant in Preston County, ss:

I, William McKee a Justice of the Township aforesaid do certify that Philip Dennis whose name is signed to the writing above bearing date on the 1st day of April 1868 acknowledged the same before me in my township aforesaid. At the same time Mary Dennis the wife of Philip Dennis whose names are signed to the writing above bearing date on the 1st day of April 1868 personally appeared before me in my township aforesaid and being duly examined by me privily and apart from her said husband and having the writing aforesaid fully explained to her, she, the said Mary Dennis ac-

knowledged the said writing to be her act and declared that she had willingly executed the same and does not wish to retract it.

Given under my hand the 11th day of April 1868.

WM. McKEE, *Justice.*

2580 WEST VIRGINIA, *ss:*

On this 9th day of June 1868 this deed was produced to me, Henry Startzman, Recorder of the County of Preston, in my office duly certified and admitted to record. And I further certify that said deed had thereupon an adhesive stamp duly cancelled of two dollars for denoting the duties imposed thereon by the "Excise Law."

Teste:

HENRY STARTZMAN, *Recorder.*

WEST VIRGINIA, *ss:*

I, Henry Startzman, Recorder of the County of Preston certify that the foregoing is an original deed formerly recorded in my office in Book No. 24 Pages 135 &c which book having been destroyed by fire on application of the Grantee the said deed authenticated as per certificate thereon endorsed is thereupon recorded anew.

Given under my hand this 20th day of April 1870.

HENRY STARTZMAN, *Recorder.*

A copy from the record.

Teste:

J. AMI MARTIN, *Clerk.*

Endorsed: Philip Dennis To Jos. C. Feather. Deed. Copy. Exhibit No. 8 Copy &c. 75¢.

This Deed made this 17th day of December 1880 between Jonas DeBerry and Lucinda his wife, Grantors of the first part and
2581 John A. Rechart Grantee of the second part, all of the District of Pleasant County of Preston and State of West Virginia, Witnesseth: That in consideration of the sum of Five hundred dollars to be paid to said Grantors by said Grantee as follows: One hundred dollars on the 17th day of December 1881; one hundred dollars on the 17th day of December 1882; One hundred dollars on the 17th day of December 1883, One hundred dollars on the 17th day of December 1884, One hundred dollars on the 17th day of December 1885 with legal interest on all of said sums from this date till paid; for the true payemnt of the purchase money above mentioned a vendors lien is retained on the land hereby conveyed by said Grantor. The said Grantors do grant with General Warranty unto the said Grantee all the following described tract or parcel of land lying and being in the District of Pleasant, County of Preston and State of West Virginia, on the waters of Youghiogheny and adjoining land of Geo. H. Rodeheaver and others and bounded as follows, to wit: Beginning at a stone pile in the old Maryland line 169 poles N. of the two pitch pines standing 16½ poles N. of White

Rock Run; thence N. 106 poles to a stake and stone pile thence W. 151 poles to the new Maryland line at a rock and pointers*t* with said line S. 106 poles to a stone pile thence E. 151 poles to the beginning containing one hundred acres be the same more or less, being the same land conveyed by N. B. Browning and wife to said Grantors by deed bearing date March 19th 1876; and the said Grantors covenant with said Grantee that they have good right to convey said land to said Grantee together with all the privileges and appurtenances in any manner thereto belonging.

Witness the following signatures and seals, the day and year above written.

2582 JONAS DE BERRY. [SEAL.]

her
LUCINDA x DE BERRY. [SEAL.]
mark

STATE OF WEST VIRGINIA.
County of Preston, To wit:

I, Jehu Jenkins a Justice in and for the County and State aforesaid certify that Jonas De Berry whose name is signed to the writing hereto annexed bearing date December 17th 1880 acknowledged the same before me in my said County aforesaid. I also certify that Lucinda De Berry wife of the said Jonas De Berry whose names are signed to the writing hereto annexed bearing date December 17th 1880 being examined by me privily and apart from her said husband and after having said writing fully explained to her, she, the said Lucinda De Berry acknowledged said writing to be her act and deed declared that she had willingly executed the same and that she does not wish to retract it.

Given under my hand this 17th day of December 1880.

JEHU JENKINS, *Justice.*

WEST VIRGINIA *ss:*

On the 27th day of April 1882 the foregoing writing with certificate thereto was produced to me in my office and therein admitted to record.

Teste:

J. AMI MARTIN,
Clerk County Court, Preston County.

2583 A copy from the record.
Teste:

J. AMI MARTIN, *Clerk.*

Endorsed: Jos. De Berry To John A. Reckart Deed. Copy. Exhibit No. 9. Copy &c. 75.

This Indenture made this 26th day of June in the year Eighteen hundred and sixty nine between Andrew Teets and Catherine his wife of the first part and George W. Teats Grantee of the second

part, all of Grant Township, Preston County and State of West Virginia, Witnesseth: That in consideration of the sum of two hundred dollars the receipt whereof is hereby acknowledged, the said Grantors do grant with General Warranty unto the said Grantee his heirs and assigns all the following described tract or parcel of land situated and being in the Township, County and State above mentioned -djoin- lands of Cornelius Friend, Andrew Teats (Grantor) and others and bounded as follows:

Beginning at a chestnut oak thence N. 50 W. 57 poles to a chestnut stu*pm* N. 32½ E., 40 poles to a stake and stone N. 27½ E. 40 poles to stone and stake, N. 52½ E. 73 poles to stone on small rock; N. 75 E. 15¼ poles to stone corner to Cornelius Friend and with his line S. 78 E. 17 poles to stone heap corner to said Friend, thence S. 134 poles to stone pile S. 77 W. 84 poles to the beginning containing eighty two acres. To have and to hold the above described premises together and with all and every of the appurtenances and privileges thereto belonging and the said Grantors covenant
2584 and say that they have good right to convey the said premises to the said Grantee (his heirs and assigns forever) Witness the following signatures and seals.—This deed is made in lieu of a deed that was made by said Grantors to said Grantee for the above mentioned land which deed was destroyed by the burning of the Court house and recorder's office at Kingwood Preston County, West Virginia on the morning of March 7th 1869.

his
ANDREW x TEATS. [SEAL.]
mark

her
CATHERINE x TEATS. [SEAL.]
mark

STATE OF WEST VIRGINIA,
County of Preston, Grant Township, To wit:

I, Jas. G. Crawford a Notary Public in and for the aforesaid County do certify that Andrew Teats whose names is signed to the within writing bearing date on the 26 day of June in the year 1869 acknowledged the same before me whose name is also signed to the writing hereto annexed and being duly examined by me separate and apart from her husband and having the said writing fully explained to her the said Catherine Teats acknowledged the same to be her act and deed and declared that she had willingly executed the same and does not wish to retract it.

Given under my hand this 26th day of June 1869.

JAS. G. CRAWFORD, *N. P.* [SEAL.]

2585 WEST VIRGINIA, *ss:*

On the 21st day of March 1871 this deed was produced to me *in* Henry Startzman, Recorder of the County of Preston, in my office duly certified and admitted to record.

Teste: HENRY STARTZMAN, *Recorder.*

A copy from the record.

Teste: J. AMI MARTIN, *Clerk.*

Endorsed: Andrew Teets To Geo. W. Teets. Deed. Copy. Exhibit No. 10. Copy &c. 65c.

This Deed made this 6th day of March 1876 between William McKee and Mary McKee his wife Grantors of the first part and George Teats Grantee of the second part, Witnesseth: That for and in consideration of the sum of forty five dollars in hand paid the receipt of which is hereby acknowledged the said parties of the first part do grant unto the said party of the second part his heirs and assigns forever the following tract of land; First: the said party of the first part do grant with covenants of Special Warranty a certain tract of land adjoining lands of said Grantee and Isaac Laton and others and being in the County of Preston and State of West Virginia; Beginning at a stone pile corner to said Teets, with his line reversed S. 77 N. 86 poles to chestnut oak corner to said Leighton and with his line reversed S. 27 W. 32 poles to
2586 black oak S. 75 E. 103 poles to white oak and N. 77 poles to the beginning containing thirty one and one half acres. To have and to hold the above described tract of land unto the said George Teets his heirs and assigns forever.

In testimony whereof: Witness the following signatures and seals the day and year first above written.

WILLIAM McKEE. [SEAL.]
MARY M. McKEE. [SEAL.]

STATE OF WEST VIRGINIA,
County of Preston, ss:

I, Jas. M. Chidester a Notary Public in and for the County and State aforesaid do certify that William McKee whose name is signed to the foregoing writing bearing date on the 6th day of March 1876 acknowledged the same before me in my said County; and at the same time and place Mary McKee wife of the said William McKee whose names are signed to the writing hereto annexed personally appeared before me and having the said writing fully explained to her in the absence of her husband she acknowledged the said writing to be her act and deed and declared she had willingly executed the same and does not wish to retract it.

Given under my hand this 17th day of March 1876.

J. M. CHIDESTER,
Notary Public.

WEST VIRGINIA, *ss:*

On this 8th day of March 1876 this deed was produced to me Henry Startzman Clerk of the County Court of Preston County, in my office duly certified and admitted to record.

Teste: HENRY STARTZMAN, *Clerk.*

2587 A copy from the record.

Teste: J. AMI MARTIN, *Clerk.*

Endorsed: Wm. McKee To Geo. Teets Deed. Copy Exhibit No. 11. Copy &c. 60c.

This Deed made this 15th day of December in the year Eighteen hundred and ninety between Mary Frazee of the District of Portland, Preston County, West Virginia, the Grantor, and Henry P. Sines of Pleasant District, Preston County, W. Va. the Grantee; Witnesseth: That in consideration of Six hundred dollars, one hundred dollars in hand paid, the receipt of which is hereby acknowledged, the residue to be paid as follows, fifty dollars to be paid on or before the first day of April 1891, and then fifty dollars annually until the above amount is paid, with interest thereon; and the said Grantor do hereby retain a lien on the said land hereby conveyed to the said Grantee for the deferred payments of the purchase money of Five hundred dollars above mentioned; the said Grantors do Grant with General Warranty unto the said Grantee all of a certain tract of land situate in Pleasant District, in the County of Preston, State of Virginia, on the waters of adjoining lands of Jno. A. Reckart, William Sisler and others and bounded as follows, to wit: Adjoining lands with Jno. A. Reckart on the south and the new Md. and Va. line on the west, and the old Md. and Va. line on the east and Wm. Sisler on the north. Beginning for the same at the north east corner of the one hundred and forty acres sold
2588 to Jonah De Berry by N. B. Browning, north one hundred and sixteen poles with the old Md. line to a stone pile and stake, then west 152 poles to the new Md. line to a stake and stone pile and pointers; thence south 116 poles to a stake and stone pile with said De Berry tract; then east 152 poles to the beginning containing one hundred and ten acres more or less, being the same tract of land that was conveyed to the Grantor by N. B. Browning and Susan C. his wife by deed now of record in Deed Book No. 59 page 385 of the records of said County of Preston, State of W. Va. And the said Grantor covenant that she has the right to convey as aforesaid the said land to the said Grantee and that the same is free from all incumbrances.

Witness the following signature and seal.

her
MARY x FRAZEE. [SEAL.]
mark

Attest:
ALBERT TEETS.

STATE OF WEST VIRGINIA,
County of Preston, To wit:

I, Albert Teets a Notary Public of the County aforesaid do certify that Mary Frazee whose name is signed to the above deed bearing date on the 15th day of December 1890 has this day acknowledged the same before me in my said County.

Given under my hand this 15th day of Dec. 1890.

ALBERT TEETS,
Notary Public.

STATE OF WEST VIRGINIA, *ss:*

On the 16th day of March 1891 the foregoing writing with certificate thereto was produced to me in my office and therein admitted to record.

2589 Teste:

J. AMI MARTIN,
Clerk County Court, Preston County.

A copy from the record.
Teste:

J. AMI MARTIN, *Clerk.*

Endorsed: Mary Frazee to Henry P. Sines Deed. Copy. Exhibit No. 12. Copy &c 70c

This Indenture made this 30th day of March in the year Eighteen hundred and seventy two between John D. James of Levado County and State of California Grantor of the first part and Marshal and Taylor Friend Grantees of Pleasant Township, Preston County and State of W. Va. of the second part; Witnesseth: That in consideration of the sum of Five hundred and forty dollars in hand paid the receipt of which is hereby acknowledged. The Grantor do grant with General Warranty unto the said Grantees their heirs and assigns all the following described tract or parcel of land situate in Pleasant Township, Preston County and State of W. Va. adjoining lands of Isaac Leighton, Jas. Falkner and others and bounded as follows, to wit: Beginning at a stone pile corner to said Leighton thence S. 7 W. 80 poles to stone heap, E. 124 poles to chestnut and white oak, N. 143 poles to W. O. N. 75 W. 108 poles to red oak corner to said Leighton and with his line reversed S. 9¼ W. 92 poles to the beginning containing one hundred and sixteen acres. To

2590 have and to hold the above described premises with all and every of the appurtenances and privileges thereto in any manner belonging, and said Grantor do covenant that he has good right to convey the said premises to the said Grantees.

Witness my hand and seal this 30th day of March 1872.

JOHN D. JAMES. [SEAL.]

STATE OF WEST VIRGINIA,
County of Preston, Pleasant Township, ss:

I, Jas. G. Crawford a Notary Public in and for the County aforesaid do certify that John James whose name is signed to the writing hereto annexed bearing date on the 30th day of March 1872 has this day acknowledged the same before me in my said County.

Given under my hand this 30th day of March 1872.

JAS. G. CRAWFORD, *N. P.*

N. B.—John D. James' wife not being here to sign the above deed she being in California I, Samuel Danks do bind myself that said James wife will never trouble said Grantees on account of her title to said land.

Given under my hand this 30th day of March 1872.

SAMUEL DANKS.

WEST VIRGINIA, *ss:*

On this 8th day of August 1872 this deed was produced to me Henry Startzman Recorder of the County of Preston, in my office duly certified and admitted to record, having thereon an adhesive stamp duly cancelled of one dollar for denoting the duties imposed thereon by the "Excise Law."

Teste:

HENRY STARTZMAN, *Recorder.*

A copy from the record.

Teste:

J. AMI MARTIN, *Clerk.*

2591 Endorsed: Jno. D. James To M. & F. Friend Deed. Copy. Exhibit No. 13. Copy &c. 65c.

This Deed made this 16th day of May in the year of our Lord one thousand eight hundred and ninety one between Z. Taylor Friend and Elizabeth Friend his wife of the County of Garrett and State of Maryland parties of the first part and Marshal Friend of Preston County and State of West Virginia, party of the second part; Witnesseth: That the parties of the first part for and in consideration of the sum of three hundred and forty five dollars to them paid by the said party of the second part, the receipt of which is hereby acknowledged, do by these presents grant, bargain and sell unto the said party of the second part and his heirs and assigns the following described tract or parcel of land, the same being the undivided half of a piece of land purchased by Marshal and Z. Taylor Friend of John D. James as shown by deed dated on the 30th day of March 1872 and recorded in Book No. 37 pages 62 & 3, and situated in Pleasant Township, Preston County and State of W. Va., adjoining lands of Falkner, Teats, Cuppett and others and bounded as follows: Beginning at a stone pile corner to the Leighton property, and running thence S. seven degrees W. eighty perches to a stone heap, E. one hundred and twenty four perches to chestnut and white oak, N. one hundred and forty three perches to a white oak, N. seventy five degrees, W. one hundred and eight perches to a red oak corner to the Leighton property, and with his line reversed S. nine and one fourth degrees W. ninety two perches to the place of beginning and
2592 containing one hundred and sixteen acres. Together with all and singular the tenements, hereditaments and appurtenances thereto belonging or in any wise appertaining, and the reversion and reversions, remainder and remainders, rents, issues and profits thereof, and also all the estate, right, title, interest, property, possession, claim and demand whatsoever, as well in law as in equity, of the said parties of the first part, of, in or to the above described premises, and every part and parcel thereof, with its appurtenances. To have and to hold all and singular the above mentioned and described premises, together with the appurtenances unto the said party of the second part, and -is heirs and assigns forever. And the said party of the first part for themselves and their heirs, executors and administrators do hereby covenant, promise and agree to and with

the said party of the second part, his heirs and assigns, that the said premises against the claim of all persons claiming or to claim by, through or under them, only they will forever warrant and defend.

In testimony whereof the said parties of the first part have hereunto set their hands and seals the day and year first above written.

Z. TAYLOR FRIEND. [SEAL.]
ELIZABETH FRIEND. [SEAL.]

Teste:
J. M. KESSLER.

STATE OF MARYLAND,
Garrett County, ss:

I hereby certify that on this the 16th day of May 1891 before me, a Notary Public in and for said County and State aforesaid personally appeared Z. Taylor Friend and acknowledged the foregoing deed to be his respective act; and also appeared Elizabeth Friend his wife and acknowledged the foregoing deed to be her respective act and deed.

[SEAL.] JOHN M. KESSLER,
Notary Public.

2593 WEST VIRGINIA, *ss:*

On the 16th day of November 1891 the foregoing writing with certificate thereto was produced to me in my office and therein admitted to record.

Teste:

J. AMI MARTIN,
Clerk County Court, Preston County.

A copy from the record.
Teste:

J. AMI MARTIN, *Clerk.*

Endorsed: Z. T. Friend To Marshall Friend. Deed. Copy. Exhibit No. 14. Copy, &c. 85c.

This Deed made this 25th day of March 1893, between John Taylor and Elizabeth Taylor his wife of Grant District, Preston County and State of West Virginia, the Grantors and Sylvanus Fike of the same place the Grantee, Witnesseth: That in consideration of Four hundred and seventy five dollars to be paid as follows: One hundred dollars in hand paid, the receipt of which is hereby acknowledged and then fifty dollars a year annually until the whole amount is paid. The said Grantors do grant with General Warranty unto the said Grantee all of a certain piece of land situated in Grant District, in the County of Preston and State of West Virginia, on the waters of Buffalo Run adjoining lands of David F. Evans, George Teets and others and bounded as follows, to wit: Beginning at a stone corner to Joshua Fike thence N. 44 E. 56½ poles to a stone N. 66 E. 68 poles to white oak S. 84 E. 36 poles to a chestnut, S.

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70 poles to stone, S. 70 W. 15¼ poles to stone on rock, S.
2594 52½ W. 73 poles to stone heap corner to Joshua Fike, with two of his lines reversed N. 4 W. 32 poles to a stone, N. 57½ W. 60 poles to the beginning containing 48 acres more or less, being part of the same land that was conveyed to said Grantors by Frank H. Stevens and Emily Stevens his wife by deed now of record in Preston County and the said Grantors covenant that the same is free from all incumbrances. By the Grantors retaining a lien in said deed for the deferred payments.

Witness the following signatures and seals.

his
JOHN x TAYLOR. [SEAL.]
mark.

her
ELIZABETH x TAYLOR. [SEAL.]
mark.

STATE OF WEST VIRGINIA,
County of Preston, To wit:

Personally appeared before me a Notary Public in and for the aforesaid County, John Taylor and Elizabeth Taylor whose names are signed to the above deed bearing date of March 25th 1893 and acknowledged the same to be their act and do not wish to restract it.

Given under my hand in my County on this 25th day of March, 1893.

GEO. W. MILLER,
Notary Public.

WEST VIRGINIA, *ss:*

On the 5th day of Sept. 1895 the foregoing writing with certificate thereto was produced to me in my office and therein admitted to record.

Teste:

J. AMI MARTIN,
Clerk County Court, Preston County.

A copy from the record.
Teste:

J. AMI MARTIN, *Clerk.*

2595 Endorsed: John Taylor To Sylvanus Fike. Deed. Copy. Exhibit No. 15. Copy &c 60c.

This Deed made this 27th day of April in the year Eighteen hundred and Fifty five, between Jesse Spurgin and Catharine his wife of Preston County and State of Virginia, Grantors of the first part, and Andrew Teets, Grantee of Preston County and State of Virginia, of the second part, Witnesseth: That in consideration of the sum of five hundred dollars, to them in hand paid the receipt whereof is hereby acknowledged the said Grantors do grant with General Warranty

unto the said Grantee all of the following described tract of land lying in Preston County and State of Virginia, situate on the waters of Buffalo Run adjoining lands of Richard Glover, David V. Sickle, other land of said Grantor and others and bounded as follows, to wit: Beginning at a chestnut 8 poles north of the beginning corner to said Grantors Whippoorwill survey and running thence S. 204 poles to stone pile S. 77 W. 84 poles to a chestnut oak corner to Richard Glover, N. 50 W. 156 poles to a chestnut near the head of a drain corner to said Glover and also corner to David B. Sickle, thence with two of said Sickle's line N. 2 E. 70 poles to a chestnut, 52 62
No. 62 W. 68 poles to a W. O., No. 52 E. 19 poles to a Spanish oak corner to Rebecca Ringer and with her line N. 33 E. 30 poles to a chestnut oak, S. 63 E. 109 poles to stone pile, N. 66 E. 68 poles to a W. O., S. 78 E. 58 poles to the beginning containing 240 acres more or less. Together with all and every of the appurtenances and privileges thereto in any manner belonging. And the said Grantors covenant that they have good right to convey the said premises to the said Grantee.

2596 Witness the following signatures and seals.

JESSE SPURGIN. [SEAL.]
her
CATHARINE x SPURGIN. [SEAL.]
mark.

STATE OF VIRGINIA,
County of Preston, To wit:

I, a Justice of the Peace for the County and State aforesaid, do certify that Jesse Spurgin whose name is signed to the writing hereto annexed bearing date on the 27th day of April in the year 1855 has acknowledged the same before me in my County aforesaid. Given under my hand this 27th day of April 1855.

H. HAGANS, *J. P.* [SEAL.]

STATE OF VIRGINIA,
County of Preston, To wit:

We, H. Hagans and Wm. McKee Justices of the Peace for the said County, in the State aforesaid, do certify that Catharine, the wife of Jesse Spurgin whose names are signed to the writing hereto annexed bearing date on the 27th day of April in the year 1855 personally appeared before us in the said County, and being examined by us privily and apart from her husband and the said writing having been fully explained to her, she the said Catharine Spurgin acknowledged the said writing to be her act and deed, and declared that she had willingly executed the same and does not wish to retract it.

Given under our hands this 31st day of May 1856.

H. HAGANS, *J. P.* [SEAL.]
WM. McKEE, *J. P.* [SEAL.]

VIRGINIA:

Be it known that on the 10th day of November 1856 this deed was produced to me Smith Crane Clerk of the County Court of
2597 Preston in my office duly certified and admitted to record.
Teste:

SMITH CRANE, *Clerk.*

WEST VIRGINIA, *ss:*

I, Henry Startzman Recorder of the County of Preston, certify that the foregoing is an original deed formerly recorded in my office in deed book No. 13 page 78, which book having been destroyed by fire on application of the Grantee the said deed authenticated as per certificate thereon endorsed is thereupon recorded anew.

Given under my hand this 4th day of March 1871.

HENRY STARTZMAN, *Recorder.*

A copy from the record.
Teste:

J. AMI MARTIN, *Clerk.*

Endorsed: Jesse Spurgin To Andrew Teets. Deed. Copy. Exhibit No. 16. Copy &c. 85.

This Deed made this 8th day of April in the year Eighteen hundred and ninety one between John Taylor and Elizabeth Taylor his wife of Grant District, Preston County West Virginia, the Grantors, and Joshua Fike of the same place the Grantee:

Witnesseth: That in consideration of four hundred and seventy five dollars to be paid as follows: Fifty dollars in hand paid, the receipt whereof is hereby acknowledged, twenty five dollars April 1st day 1892, fifty dollars on the 1st day of November 1893, Fifty dollars on the first day of November 1894, Fifty dollars on the 1st day of November 1895, Fifty dollars on the first day of November
2598 1896, Fifty dollars on the 1st day of November 1897, Fifty dollars on the 1st day of November 1898, Fifty dollars on the 1st day of November 1899, Fifty dollars on the 1st day of November 1900. And the said Grantors do hereby retain a lien on the said land hereby conveyed to the said Grantee for the deferred payments of the purchase money of Four hundred and twenty five dollars above mentioned; the said Grantors do grant with General Warranty, unto the said Grantee all of a certain piece of land situate in Grant District, in the County of Preston, State of West Virginia on the waters of Buffalo Run, adjoining lands of David F. Evans, George Teats, G. W. Glover, dec'd heirs and others, and bounded as follows, to wit: Beginning at a chestnut corner to D. F. Evans, Andred Ringer, thence N. 44 E. 88 poles to stone at a gate, S. 57½ E. 60 poles stone, S. 4 E. 32 poles to stone and ash, S. 27½ W. 40 poles to a stone, S. 32½ W. 40 poles chestnut, N. 50 W. 103 poles to the beginning, containing fifty three acres, more or less, being part of the same land that was conveyed to the said Grantor by Alexander Thomas and wife by deed now of record in Deed Book No. —, page

— of the records of said County of Preston. And the said Grantors covenant that they have the right to convey as aforesaid the said piece of land to the said Grantee and that the same is free from all incumbrances.

Witness the following signatures and seals.

his
JOHN x TAYLOR. [SEAL.]
mark

her
ELIZABETH x TAYLOR. [SEAL.]
mark

STATE OF WEST VIRGINIA,
County of Preston, To wit:

I, Jas. G. Crawford a Notary Public of the County aforesaid do certify that John Taylor whose name is signed to the above
2599 deed bearing date on the 8th day of April 1891 has this day acknowledged the same before me in my said County.

Given under my hand this 8th day of April 1891.

JAS. G. CRAWFORD, *N. P.*

STATE OF WEST VIRGINIA,
County of Preston, To wit:

I, Jas G. Crawford, a Notary Public of the County aforesaid do certify that Elizabeth Taylor the wife of said John Taylor whose names are signed to the above deed bearing date on the 8th day of April 1891, personally appeared before me in the County aforesaid and being examined by me privily and apart from her said husband and having the said writing fully explained to her, the said Elizabeth Taylor acknowledged the said writing to be her act, and declared that she had willingly executed the same and does not wish to retract it.

Given under my hand this 8th day of April 1891.

JAS. G. CRAWFORD, *N. P.*

STATE OF WEST VIRGINIA,
County of Preston, To wit:

On the 22nd day of April 1891, the foregoing deed with certificate thereto was produced to me in my office and therein admitted to record.

Teste:

J. AMI MARTIN,
Clerk County Court, Preston County.

A copy from the record.
Teste:

J. AMI MARTIN, *Clerk.*

Endorsed: John Taylor To Joshua Fike. Deed. Copy. Exhibit No. 17. Copy &c 85c.

2600 This Deed made this 17th day of April in the year Eighteen hundred and Eighty three between Joseph Fearer Sr. and Elizabeth his wife of Grant District, Preston County and State of West Virginia, the Grantor, and Joseph Fearer Jr. and William Fearer of same place, the Grantees; Witnesseth: That in consideration of the sum of seven hundred dollars to be paid as follows: viz: Fifty dollars on the first day of April 1884, and fifty dollars yearly on first day of April until the above mentioned sum be paid. In further consideration said Grantees (being sons of said Grantors) do agree and bind themselves to keep and provide for said Grantors a good and comfortable living and take good care of them in health and in sickness during their life, and also *Surrelda* Fearer, daughter of Grantors is to have a bed and bedding and have a home with her parents as long as she remains single. For the true fulfillment of the above agreement the said Grantors do hereby retain a lien on the lands hereby conveyed to the said Grantees for all the above named considerations and also for the deferred payments of the purchase money of seven hundred dollars above mentioned; the said Grantors do grant with General Warranty unto the said Grantees all of a certain tract of land situate in Grant District, in the County of Preston, State of West Virginia, on the waters of Buffalo Run, adjoining lands of Joseph Guthrie, John Vansickle and other, and bounded as follows, to wit: Beginning at a Black oak on Md. and W. Va. line with said N. ninety seven poles to stone heap corner to John Vansickle, with his line S. seventy four degrees, W. one hundred and seven poles to stone heap corner to John Vansickle, S. Thirteen degrees E. ninety five poles to chestnut corner to Joseph Guthrie N. thirty five degrees E. ninety five degrees E. twenty eight poles to a locust, N. Eighty three degrees E. forty two poles to the beginning, containing fifty and one fourth acres; and also

2601 said Grantees is to have all the following described property, that is on the place; one threshing machine one wagon, one set of Blacksmith tools, one set of harness &c, one colt, two cows, two yearling cattle, sheep, plows and harrows, and other farming utensils and household and Kitchen furniture.

And the said Grantors covenant that they have the right to convey as aforesaid the said premises to the said Grantees and that the same is free from all incumbrances.

Witness the following signatures and seals.

his
JOSEPH x FEARER. [SEAL.]
mark

her
ELIZABETH x FEARER. [SEAL.]
mark

STATE OF WEST VIRGINIA,
Preston County, ss:

I, Jas. G. Crawford a Notary Public of the County aforesaid do certify that Joseph Fearer Sr. whose name is signed to the above

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deed bearing date on the 17th day of April 1883, has this day acknowledged the same before me in my said County.

Given under my hand this 17th day of April 1883.

JAS. G. CRAWFORD, *N. P.*

STATE OF WEST VIRGINIA,
County of Preston, To wit:

I, Jas. G. Crawford, a Notary Public of the County aforesaid do certify that Elizabeth Fearer wife of said Joseph Fearer Sr. whose names are signed to the above deed bearing date on the 17th day of April 1883, personally appeared before me in the County aforesaid and being examined by me privily and apart from her said husband and having the said writing fully explained to her, the said Elizabeth Fearer acknowledged the said writing to be her act and
2602 declared that she had willingly executed the same and does not wish to retract it.

Given under my hand this 17th day of April 1883.

JAS. G. CRAWFORD, *N. P.*

STATE OF WEST VIRGINIA,
County of Preston, To wit:

On the 9th day of February 1885 the foregoing writing with certificate thereto was produced to me in my office and therein admitted to record.

Teste:

J. AMI MARTIN,
Clerk County Court, Preston County.

A copy from the record.

Teste:

J. AMI MARTIN, *Clerk.*

Endorsed: Jos. Fearer Sr. To Jos. & Wm. Fearer. Deed. Copy. Exhibit No. 18. Copy &c. 85c.

This Deed made this 30th day of March in the year Eighteen hundred and Seventy between Andrew G. Friend and Mahalia his wife of Grant Township Preston County and State of West Virginia, Grantors of the first part and Joseph Guthrie, Grantee of Pleasant Township, Preston County and State of West Virginia of the second part;

Witnesseth: That in consideration of the sum of twelve hundred and thirty seven dollars to be paid as follows: Six hundred and thirty seven dollars on or before the first day of May 1870; Five hundred and thirty seven dollars of the above named Six hundred and thirty seven is paid this day, March 30th 1870, the re-
2603 ceipt whereof is hereby acknowledged; One hundred dollars 1st day of May 1870, One hundred April 1st day 1871; One hundred dollars April 1st 1872; One hundred dollars on the 1st day of April 1873; One hundred dollars 1st day of April 1874; One

hundred dollars 1st day of April 1875; One hundred, the last, April 1st 1876; the deferred payments are to be constituted a lien on the lands conveyed by this deed; said Grantors do grant with General Warranty unto the Grantee all the following described tract of land situated and being in the County and State above mentioned on the waters of Little Sandy Creek adjoining lands of John C. Robinson, John Vansickle, Edward Callis and others. The one tract containing eighty acres, being part of one hundred acre tract conveyed by Gabriel More heirs to Eli More and from Eli More to said Andrew G. Friend Grantor, deed bearing date January 1st 1865, and the other tract of five acres and 24 poles conveyed by John C. Robinson deed bearing date on the 28th of December 1864. Beginning at the first corner of the Eighty acre tract at a white oak stump and stone heap, thence with the line of the five acre tract N. 40 W. 23¼ poles to a small chestnut corner to John C. Robinson, with his line N. 26 E. 74 poles to a small white oak, N. 10 E. 13 poles to a white oak corner to John Vansickle, with his line S. 60 E. 80 poles to a white oak, S. 31 E. 91¼ poles to stone corner to Alexander Thomas, with his line S. 49½ W. 87 poles to a stone heap, N. 50 W. 53¼ poles to chestnut, N. 31½ W. 50 poles to the beginning containing eighty five acres 24 perches more or less. Together with all and every of the appurtenances and privileges thereto in any manner belonging, and the said Grantors covenant that they have good right to convey the said premises to said Grantee, his heirs and assigns.

Witness the following signatures and seals.

2604 ANDREW G. FRIEND. [SEAL.]
MAHALIA FRIEND. [SEAL.]

STATE OF WEST VIRGINIA.
County of Preston, To wit:

I, Jas. G. Crawford a Notary Public in and for the County and State aforesaid do certify that Andrew G. Friend whose name is signed to the writing hereto annexed bearing date on the 30th day of March 1870, has acknowledged the same before me in my said County; and at the same time and place Mahala Friend wife of the aforesaid Andrew G. Friend whose name is also signed to the writing hereto annexed personally appeared before me and being examined by me privily and apart from her said husband and the said writing having been fully explained to her the said Mahala Friend acknowledged the said writing to be her act and deed and declared that she had willingly executed the same and does not wish to retract it.

Given under my hand this 30th day of March 1870.

JAS. G. CRAWFORD, *N. P.*

WEST VIRGINIA, *ss:*

On this 31st day of March 1870, this deed was produced to me Henry Startzman Recorder of the County of Preston in my office duly certified and admitted to record. And I further certify that said deed had thereupon an adhesive stamp duly cancelled of One Dollar

and fifty cents for denoting the duties imposed thereon by the excise law.

Teste:

HENRY STARTZMAN, *Recorder.*

A copy from the record.
Teste:

J. AMI MARTIN, *Clerk.*

2605 Endorsed: Andrew G. Friend To Jos. Guthrie. Deed. Copy. Exhibit No. 19. Copy &c 80c.

H. Ludington, 106, Preston.

John Floyd, Esquire, Governor of the Commonwealth of Virginia, to all to whom these presents shall come, Greeting:

Know Ye, That in conformity with a survey made on the 23rd day of January, one thousand eight hundred and thirty three by virtue of Land Office Exchange Treasury Warrant N-. 2616 issued December 14th 1831, there is granted by the said Commonwealth unto Horace Ludington a certain Tract or Parcel of Land, containing 106 acres situate in Preston County on Scrub Glade Run E. Fork and bounded as followeth to wit. Beginning at a stone, corner to Jacob Thomas survey of 100 acres and running thence with the 2nd line of the same reversed E. 100 poles to a stake and small Spanish oak, thence S. 120 poles to a small black oak thence W. 94 poles to a white oak thence N. 65 W. 76 to three white oaks thence N. 6 W. 27 poles to a black oak thence N. 38 E. 66 poles to a white oak, thence N. 60 E. 28 poles to the place of beginning.

To have and to hold the said Tract or Parcel of land with its appurtenances, to the said Horace Ludington and his heirs forever.

In witness whereof, The said John Floyd, Esquire, Governor of the Commonwealth of Virginia, hath hereunto set his hand and caused the Lesser Seal of the said Commonwealth, to be affixed at Richmond, on the 29th day of November in the year of our
2606 Lord one thousand eight hundred and 33 and of the Commonwealth the 58th.

[SEAL.] JOHN FLOYD.

STATE OF WEST VIRGINIA,
Auditor's Office, City of Charleston, To wit:

I, A. C. Scherr, Auditor of the State of West Virginia, do hereby certify that the foregoing is a true copy of a paper, purporting to be a grant from the State of Virginia to H. Ludington dated the 29th day of November, 1833, on file in said Auditor's office among the certified copies of records received from the office of the Register of the Land office at Richmond, Virginia, and deposited in the said Auditor's Office, under Acts of the Legislature of West Virginia, passed February 24th, 1893, and February 20th, 1897.

BLURRED PAGE

Given under my hand and official seal, at Charleston, W. Va., this 20th day of July, 1906.

[SEAL.] A. C. SCHERR, *Auditor.*

Wyndham Robertson, Esquire, Lieut. Governor of the Commonwealth of Virginia, to all to whom these presents shall come, Greeting:

Know ye, That in conformity with a survey made on the 23rd day of January, one thousand eight hundred and 33, by virtue of Land Office Treasury Warrant No. 2616, there is granted by the said Commonwealth unto Jacob Thomas, a certain tract or parcel of Land containing 100 acres situate in Preston County on a small drain
2607 running into Scrub Glade run along & adjoining the Pennsylvania and Maryland lines, bounded as follows to wit: Beginning at a stone pile on the Pennsylvania line & supposed corner of the Maryland line & running thence with the Maryland line S. 160 po. to a stake & small Spanish oak, thence leaving said line & running W. 100 po. to a stone Pile, thence N 160 po. crossing a branch of Scrubby Glade Run to the Pennsylvania line, thence with said line E. 100 po. to the beginning with its appertinances.

Book 86, Page 618, Acres 100.

To have and to hold the said Tract or Parcel of Land, with its appurtenances, to the said Jacob Thomas and his heirs forever.

In witness whereof, the said Wyndham Robertson, Esquire, Lieut. Governor of the Commonwealth of Virginia, hath hereunto set his hand and caused the lesser seal of the said Commonwealth to be affixed at Richmond, on the 18th day of January, in the year of our Lord one thousand 837, and of the Commonwealth the 61st.

[SEAL.] *

LAND OFFICE, RICHMOND, VA.

I hereby certify that the foregoing is a true copy from the records of this Office. Witness my hand and seal of office, this first day of October, 1892.

[SEAL.] W. R. GAINES,
Register of the Land Office.

* This Grant was not signed by the Governor. R. T. Gaines, c.

Endorsed: Jacob Thomas—100 acres. Maryland *vs.* West Virginia. Defendants Exhibit. N. No. 9 Patent. Jacob Thomas 100 acres Exhibit No. 21.

2608 David Campbell, Esquire, Governor of the Commonwealth of Virginia, to all to whom these presents shall come, Greeting:

Know ye, That in conformity with a survey made on the 28th day of May, one thousand eight hundred and 38, by virtue of Land Office Treasury Warrant No. 12,732, there is granted by the said Commonwealth unto Isaac James, a certain tract or parcel of Land, containing 220 Acres, situate in Preston County along the Maryland

line, bounded as follows—Beginning at a black oak in said line, and the beginning corner of a survey made for Daniel Guffy, thence with his first line S 83° W. 40 po. to a locust, thence S. 35° W. 40 po. to chestnut, S. 55° W. 122 po. to a line of a survey made for Peter Garbough & with the same S. 18° W. 12 po. to red oak his corner, thence S. 105 105 po. to a chestnut S. 67° E. 182 po. to a stake in said State line and with the same N. 295 po. to the beginning with its appertenances.

Book 90. Page 688. Acres 220.

To have and to hold the said Tract or parcel of Land, with its appurtenances, to the said Isaac James and his heirs forever.

In witness whereof, the said David Campbell, Esquire, Governor of the Commonwealth of Virginia, hath hereunto set his hand and caused the Lesser Seal of the said Commonwealth to be affixed at Richmond, on the 28th day of November, in the year of our Lord one thousand 839, and of the Commonwealth the 64th.

[SEAL.] DAVID CAMPBELL,

LAND OFFICE, RICHMOND, VA.

I hereby certify that the foregoing is a true copy from the records of this office. Witness my hand and seal of office, this first
2609 day of October, 1892.

[SEAL.] W. R. GAINES,
Register of the Land Office.

Endorsed: Isaac James 220 acres. Maryland *vs.* West Virginia. Defendants Exhibit. X—No. 10—Patent. Isaac James Patent 220 acres Exhibit No. 22.

This Deed made this 12th day of October in the year Eighteen hundred and seventy two between Samuel Norment and John B. Ward, Executors of the estate of Ulyssus Ward deceased, of Washington City and District of Columbia, Grantors of the first part, and Uriah N. Orr of the County of Preston and State of West Virginia of the other part, Witnesseth: That for and in consideration of the sum of nine hundred and fifty three dollars and eighty cents ($953.80) to be paid by the said Orr in the following sums and at the following mentioned dates, that is to say:—Three hundred and seventeen dollars and ninety three cents on or before the first day of February Eighteen hundred and seventy three with out interest until that time, and also three hundred and seventeen dollars and ninety three cents on or before the first day of February Eighteen hundred and seventy four with interest thereon from and after the *twel-th* day of October Eighteen hundred and seventy two and also three hundred and seventeen dollars and ninety three cents on or before the first day of February Eighteen hundred and seventy five with the interest thereon from and after the *twelfth* day of October Eighteen hundred and seventy two, for which said several sums of money the said Uriah N. Orr hath this day executed his
2610 three several notes of $317.93 each payable as above specified to the said Norment and Ward, Executors as aforesaid for

and in consideration in full of the above absolute purchase of the three hundred and eighty acres of land hereafter mentioned and described and for the true payment of which three several notes a lien is hereby retained upon the said land hereby conveyed. In consideration of which the said Grantors do grant with General Warranty unto the said Uriah N. Orr his heirs and assigns forever all and singular a certain tract piece or parcel of land containing three hundred and eighty acres of land situate in Portland District in the County of Preston and State of W. Va. it being that part of the survey of 6000 acres known as Westphalia on the east side of Cheat River, lately the property of said Ulysses Ward dec'd, on the North fork of Snowy Creek, which part hereby intended to be conveyed is known as lot No. 8 in the recent division of said survey and which is bounded as follows: Beginning at a chestnut corner to David Freelands home tract of 400 acres and running thence with the line of the same South 80 east 164 poles (crossing Snowy Creek to a stone pile on said line a corner to 190 acres of land purchased by David Freeland of the said Ulysses Ward dec'd and running thence with four of the lines of the same reversed, viz: N. 15 E. 130 poles to an ironwood tree and pointers on the bank of the creek thence N. 62 E. 32 poles to a pine tree, thence N. 25 E. 59 poles to a stone pile, thence N. 50 E. 74 poles to a stone pile on a ridge corner to 350 acres heretofore conveyed to the said Uriah N. Orr, thence with two lines of the same reversed N. 54 W. 128 poles to a pine tree, thence N. 24 W. 16 poles to a white oak and pointers supposed to be a corner of the original survey of 6000 acres, thence with five lines of the same south 80 W. 90 poles, S. 30 W. 36 poles S. 40
2611 poles S. 85 W. 91 poles, thence S. 63 W. 30 poles to pointers corner to William Glovers 76 acres, thence with his line S. 16 E. 71 poles to a stone pile in the line of T. T. Johnsons survey of 88 acres (it being part of Nathan Ashby's survey of 112 acres,) thence with two lines of the same reversed S. 88 E. 30 poles to a stone pile said Johnsons second corner, thence S. 20 W. 160 poles to a chestnut his beginning corner, thence S. 20 W. 22 poles to a white oak on the State road corner to David Freeland 400 acres aforesaid, thence with the line of the same N. 40 E. 58 poles to the beginning estimated to contain three hundred and eighty acres of land. Together with all and singular the appurtenances thereunto belonging or in any wise appertaining; and the said Grantors do covenant that they have good and lawful right and authority to convey the above described three hundred and eighty acres of land to the said Uriah N. Orr in manner and form as aforesaid.

Witness the following signatures and seals.

SAMUEL NORMENT, *Executor.* [SEAL.]
JNO. B. WARD, [SEAL.]
Executor of U. Ward, Dec'd.

PORTLAND TOWNSHIP,
Preston County, State of West Va., ss:

I, Thomas Gregg a Justice of the Peace of the County and State aforesaid and Township of Portland do certify that Samuel Norment

and John B. Ward whose names are signed to the within writing hereto annexed bearing date the 12th day of October Eighteen hundred and seventy two has this day acknowledged the same before me in my said Township, County and State aforesaid to be their act and deed, their hand and seal and desired the same to be certified to the Recorder of the County in order that the same may be
2612 recorded.

Given under my hand this 14th day of October 1872.

THOMAS GREGG, *Justice.*

WEST VIRGINIA, *88:*

On this 24th day of November 1876 this deed was produced to me J. A. Martin Clerk of the County Court of Preston County in my office duly certified and admitted to record.

Teste:

J. A. MARTIN,
Clerk County Court.

A copy from the record.

Teste:

J. AMI MARTIN, *Clerk.*

Endorsed: Wards Executors To U. N. Orr. Deed. Copy. Exhibit No. 23. Copy &c $1.00.

This Deed made this 28th day of April in the year Eighteen hundred and seventy seven between Samuel Norment of Washington City, District of Columbia and James T. Ward of Westminster, Carroll County and State of Maryland, surviving Executors of Ulysses Ward deceased, the Grantors, and Uriah N. Orr of Preston County and State of W. Va. the Grantee. Witnesseth: That in consideration of the sum of Eighteen hundred and fifty dollars to be paid in three annual*ly* or yearly payments of six hundred and Sixteen dollars and 66 2/3 cents ($616.66 2/3) with legal interest frrom this date and the said U. N. Orr has executed to the above named his notes for amounts named and the said Grantors doth hereby retain a lien on the said land hereby conveyed to
2613 the said Grantee for the deferred payments of the purchase money of Eighteen hundred and fifty dollars and interest thereon above mentioned.

The said Grantors doth grant with General Warranty unto the said Grantee all and singular certain lands situated in Portland District in the County of Preston, State of W. Va., said lands being a portion of a tract of land known as Westphalia, and described in plat of entire survey of said tract made by General Buckner Fairfax as Lots No-. 1, 2 and 9 and containing 1200 acres of land, and bounded as follows, viz: Lot No. 1: Beginning at a stone pile or ridge the corner to David Freeland tract of land containing 190 acres and also a corner to 350 acres of land previously sold by Ward estate to Uriah N. Orr, and running thence with said Freeland's line reversed S. 44 E. 100 poles to said Freeland's corner, thence E. 310 poles to the original boundary line of the States of Maryland and Virginia,

BLURRED

thence with said line N. 1¼ E. 300 poles to a white oak marked H. and pointers, thence W. 250 poles to a white oak corner to U. N. Orr's 350 acre survey aforesaid; thence with 3 of the lines of same reversed namely S. 15 E. 130 poles to a chestnut, thence S. 10 W. 60 poles to a double white oak, thence S. 75 W. 156 poles to the beginning of Lot No. 1 corner as above stated, containing 495 acres more or less. Also Lot No. 2 of said survey, and bounded as follows: Beginning at a chestnut the second corner to the above 495 acres and 190 acres of David Freeland's aforesaid and running thence E. 310 poles to the States of Virginia and Maryland boundary line, thence with the said line S. 1¼ W. 93 poles to a "planted stone" believed to be the 45th corner on the original Md. line of the original survey of 6000 acres of which this is a portion, thence with 3 lines of the same reversed viz: S. 28 W. 70 poles thence S. 82 W. 196
2614 poles, thence S. 12½ W. 217 poles to original line of lot No. 3 of same survey following said line S. 76 E. 40 poles to a cherry corner of Thomas farm formerly owned by Jno. M. Holme on State road, thence 20 W., thence S. 40 W. 49 to pointers, following line of said Holmes Mill land N. 89 W. to the track of Baltimore and Ohio R. R. which is now present boundare of Lots No. 2 and 3, thence following track of R. R. north and west to Cottage land adjoining David Freelands and following lines of Cottage and David Freelands land N. 30 E. poles to stone and red oak his corner, thence W. 31 poles to a chestnut oak corner of said Freeland 190 acres survey, thence with line of same north 15 E. 160 poles to the beginning and containing 505 acres, said lands lying north of B. & O. R. R. as also lot No. 9 hereinafter described, said two lots containing 1000 acres more or less and are sold at one dollar and fifty cents per acre with interest from date on notes. Also Lot No. 9 which partially adjoins Lot No. 1 and is bounded as follows: Beginning at a white oak marked "H" on Md. State line and corner to Lot 1, running with said State line N. 1 E. 60 poles, thence W. 550 poles to corner thence S. 24 E. 60 poles to corner of U. N. Orr 350 acre tract, thence with line of same S. 89 E. 530 poles to white oak marked "H" or beginning corner, containing 200 acres at price of one dollar and seventy five cents per acre.

Being Twelve hundred acres of land in the three above described tracts more or less, and the said Grantors covenant that they have the right to convey the said line to the said Grantee; that they have done no act to encumber the said land; that the Grantee shall have quiet possession of the said land free from all incumbrances.

Witness the following signatures and seals.

JAMES T. WARD. [SEAL.]
SAMUEL NORMENT. [SEAL.]

Witness as to Jas. T. Ward,
GEO. W. MATHENY.

Witness as to Samuel Norment,
JAS. NICHS. CALLEN.

2615 STATE OF MD., *Carroll County, ss:*

I hereby certify that on this twenty second day of September in the year 1877 before the subscriber a Justice of the Peace in and for the County aforesaid personally appeared Jas. T. Ward and acknowledged the foregoing deed to be his act.

GEO. W. MATTHEWS, *J. P.*

STATE OF MD., *Carroll County, ss:*

I hereby certify that Geo. W. Matthews Esq. before whom the annexed acknowledgment was made and who has thereto subscribed his name, was at the time of so doing a Justice of the Peace of the State of Md. in and for Carroll County, duly commissioned and sworn. In testimony whereof I hereunto set my hand and affix the seal of the Circuit Court for Carroll County, this 22nd day of Sept. A. D. 1877.

[SEAL.] FRANK T. SHAW,
Clerk Circuit Court of Carroll County.

DISTRICT OF COLUMBIA,
County of Washington, ss:

I hereby certify that on this 27th day of Sept. A. D. 1877 before me, a Notary Public in and for said District and County personally came Samuel Norment and there acknowledged the foregoing to be his act. Given under my hand and notarial seal this 27th day of Sept. 1877.

[SEAL.] JAMES NICHS. CALLEN,
Notary Public.

WEST VIRGINIA, *ss:*

On the 24th day of April 1880 the foregoing writing with the annexed certificates thereon was produced to me, J. Ami Martin, Clerk of the County Court of Preston County in my office
2616 and admitted to record.

Teste:

J. AMI MARTIN, *Clerk.*

A copy from the record.
Teste:

J. AMI MARTIN, *Clerk.*

Endorsed: Ward's Exors. To U. N. Orr. Deed. Copy. Exhibit No. 24. Copy &c. $1.15.

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COPY

2620 In the Supreme Court of the United States. In Equity.

STATE OF MARYLAND
vs.
STATE OF WEST VIRGINIA.

It is agreed by the parties to the above entitled cause that the depositions of witnesses to be taken by either party may be taken by means of a stenographer, and said parties waive the right to insist upon each witness signing his deposition, and agree that the stenographic notes of the testimony may be taken at the time the deposition is given and afterward written out, and that they shall have the same force and effect as if regularly signed by the witnesses respectively.

WILLIAM S. BRYAN, JR.,
Attorney General of Maryland,
By EDWARD H. SINCELL,
Assistant Counsel.
GEORGE E. PRICE,
Of Counsel for West Virginia.

2621 In the Supreme Court of the United States. In Equity.

STATE OF MARYLAND
vs.
STATE OF WEST VIRGINIA.

It is agreed that the depositions taken on behalf of the State of West Virginia in the above entitled cause between the 19th day of July, 1906, and the 31st day of July, 1906, before Robert W. Monroe, a Notary Public, which depositions are hereto attached, may be read as evidence on behalf of the said State of West Virginia in said cause; so far as competent the attorney of the State of Maryland having waived the service of notice for the taking of said depositions, as provided in the stipulation between counsel heretofore entered into and filed in this cause.

WILLIAM S. BRYAN, JR.,
Attorney General of Maryland,
By EDWARD H. SINCELL,
Assistant Counsel.
GEO. E. PRICE,
Of Counsel for West Virginia.

2622 In the Supreme Court of the United States. In Equity.

STATE OF MARYLAND
vs.
STATE OF WEST VIRGINIA.

Depositions of witnesses, taken in Preston County, West Virginia, before me, R. W. Monroe, a Notary Public in and for said Preston County, at the court-house of said County, at Kingwood, on the dates hereinafter set forth, beginning on the 19th day of July, 1906, pursuant to the stipulation of counsel hereto attached, to be read as evidence on behalf of the defendant, in a chancery suit now pending in the Supreme Court of the United States, wherein the State of Maryland is plaintiff, and the State of West Virginia is defendant.

Present: J. C. Renninger, counsel for the State of Maryland; George E. Price, counsel for the State of West Virginia.

2623 KINGWOOD, W. VA., *July 19th*, 1906.
10:30 o'clock, a. m.

A. M. FIKE, a witness produced on behalf of the State of West Virginia, having been duly sworn, deposes as follows:

Examination by Mr. PRICE:

1st Q. State your name, age, residence and occupation.

A. My name is A. M. Fike; age forty-two; residence, Preston County, Union District; farming is my occupation.

2nd Q. In what part of Union District do you live? How near the boundary line between Maryland and West Virginia?

A. Well, of course my land runs right to the old line. I live about—well, it isn't but about an eighth of a mile to the line, may be hardly that—to where my house is.

3rd Q. How long have you lived there?

A. On the place where I now live?

4th Q. Yes.

A. Why, just twenty-one years.

5th Q. Where were you born?

A. Right close there, about three-quarters of a mile from where I now live.

6th Q. In which direction?

A. About south-west.

7th Q. Who was your father?

A. Aaron Fike.

8th Q. How long had he lived on that place?

A. That is more than I can just tell you now.

9th Q. What is the tradition about it in your family?

A. About fifty-four or fifty-five years he has been living there. I could not tell just exactly, but somewhere along there.

10th Q. He had been living there how long before you were born?

A. Well, you will have to count that up. I wouldn't know hardly. He came there when he was eleven years old, and he is sixty-six.

11th Q. He is now living—still living?

2624 A. Yes, sir; still living.

12th Q. Now, do you know where the line is that was run by Lieutenant Michler in 1859, along there?

A. Well, not more than just what other people say, what they tell me. Of course, that was before my time.

13th Q. You did not see the line run?

A. No, sir; I did not see the line run.

14th Q. But it has been pointed out to you by neighbors who did see it run?

A. Yes, sir. Wiles told me where it was when I bought the land.

15th Q. Is your house you live in at present east or west of the Michler line?

A. West.

16th Q. How far west.

A. Well, it is I suppose thirty-five or forty rods.

17th Q. Does the land that you own extend eastward of the Michler line?

A. A little, I think it does—yes, it runs to the old line.

18th Q. About how far east of the Michler line, as you understand it?

A. Well, may be six or eight rods, or may be a little over. I could not tell exactly, but in the neighborhood of eight rods, I guess.

19th Q. Where is the boundary line between the States of Maryland and West Virginia, as you have recognized it, so far as you are concerned—where have you always recognized it?

A. That is, along my land?

20th Q. Yes.

A. Well, it runs right along my land. Of course, I have

2625 always paid taxes over to that line. I could not exactly point it out.

21st Q. Does the eastern boundary of your line conform to the state line, as you recognize it?

A. Yes, sir.

22nd Q. And that is some six or eight rods beyond the Michler line?

A. Yes, sir. That is what I am told now.

23rd Q. From whom did you get your land?

A. From Abram Wiles.

24th Q. Had he lived on it before you?

A. Yes, sir.

25th Q. How long?

A. That is something I cannot tell you. He had lived there since I knew him.

26th Q. How long had you known him?

A. I knew him from a little boy. I could not tell how long he had been living.

27th Q. From your earliest recollection?
A. Yes, sir, from my earliest recollection.
28th Q. Is your land assessed in Maryland or West Virginia?
A. West Virginia.
29th Q. You pay taxes in West Virginia?
A. Yes, sir.
30th Q. Where do you vote?
A. In West Virginia. Eglon is my voting place.
31st Q. Have you always voted there?
A. Yes, sir.
32nd Q. Where did Mr. Wiles vote?
A. In West Virginia, too.
33rd Q. And your father?
A. He never voted?
34th Q. Never voted at all?
2626 A. No, sir, he never cast a vote in his life.
35th Q. Where did he pay taxes?
A. In West Virginia.
36th Q. And where did the children go to school?
A. In West Virginia.
37th Q. Have you had anything to do with working the roads over there in that country?
A. Nothing more than working my time on them.
38th Q. You have worked on the roads?
A. Yes, sir; ever since I was sixteen.
39th Q. Are there any roads there running east and west crossing the boundary line between the two states?
A. Yes, sir.
40th Q. How far eastward did you work on the roads?
A. We always worked to the old line. I have worked three different roads there, and we always worked to the old line.
41st Q. Beyond the Michler line?
A. Yes, sir.
42nd Q. Did the Maryland authorities ever work the roads in West Virginia to the old line?
A. Never to my recollection.
43rd Q. Or collect any taxes?
A. Never.
44th Q. Or in any way exercise jurisdiction?
A. Not at all that I know of—not at all.
45th Q. Do you know where Mr. W. McCulloh Brown in 1897 ran a line northward to the Pennsylvania line? Do you know where that line is?
A. Yes, sir.
46th Q. Did you see it run?
A. Well, I saw them a little bit. I wasn't only with them
2627 —wasn't with them, only saw them pass through there. That was all.
47th Q. Do you live east or west of that line?
A. I live east of that.
48th Q. How far?

A. Well, it is nearly a mile, or just about a mile, as I suppose, as near as I can tell.

49th Q. Do you know the people that live in that territory between where you live and the line that Mr. Brown ran?

A. Yes, sir; I know them for a good ways along there, between there a right smart distance.

50th Q. Will you give the names of such of them as you remember, your neighbors between the old state line and the Brown line along there?

A. I can, yes, sir, if I do not give them all. I can give some of them. There is William S. Weimer, Leonard Simmons, George Winters, Henry Beckman, Lloyd Dawson, Adolphus Fike, Aaron Fike, Emory Fike, Dennis Biser, C. P. Jones, Obid Hamstead, Moses Fike, C. F. Shank, Albert Rush, Frederick Slaughbaugh, Eli Slaughbaugh, Ed Winters, Elijah Bachtle, John Slaughbaugh, Bud Winters, Charlie Winters. I believe that is about all I can name out that way. There is a good many along that railroad that come and go. I could not tell any more just now.

51st Q. Now, these persons that you have named—do they live between the lines I mentioned, the old state line and the line run by Mr. Brown?

A. Yes, sir.

52nd Q. How far south did you begin in naming them?

A. I began right there around me, and went south in the neighborhood of—well, I guess three miles, or something close to that—or two miles and a half.

53d Q. Did you go south as far as the Backbone mountain?

2628 A. Not quite.

54th Q. About how far from the Backbone mountain?

A. I don't suppose I am more than a quarter of a mile about from the foot of the Backbone mountain.

55th Q. Who lives farthest south of the men you named?

A. Why, Bud Winters.

56th Q. How far north have you named the residents?

A. Why, I ain't went over—not over half a mile, I guess north.

57th Q. North of your residence?

A. Yes, sir. Of course, there is some farther north there.

58th Q. Well, to what point in the country?

A. Now, I went down to the Northwestern pike. There is another name in there I did not give. I think it was Henry Wagner.

59th Q. You have named the people as far as you can recollect them between the old Maryland line as you recognize it, and the line run by Brown, extending from near the foot of the Backbone mountain northward to the Northwestern Pike.

A. Yes, sir; as near as I can give them. There may be some that I missed, but I don't remember——

60th Q. Do you know where the people you have named vote?

A. Yes, sir; I know where they vote.

61st Q. Do they vote in Maryland or West Virginia?

A. They vote in West Virginia.

62nd Q. Has that always been so in your recollection—people living in that territory?

A. Yes, sir, as far back as I can recollect.

63rd Q. Where are the lands owned that these people live on, and that they owned, between those lines, assessed for taxation?

A. In West Virginia.

64th Q. Do they pay their taxes in West Virginia?

A. Yes, sir.

2629 65th Q. Have you ever known any of them to pay taxes on any of those lands in Maryland.

A. No, I never did.

66th Q. And in working the roads along there?

A. The same——

66th Q. They work eastward over to what point?

A. To the old line, always did.

67th Q. Before 1897 had you ever heard of any boundary line between the States being claimed to run along where Mr. Brown ran his line, or in that neighborhood?

A. No, sir; I did not.

68th Q. What were the only two lines you had ever heard of before that?

A. The old original line and then the Michler. Those are the only two lines I ever heard of until that——

69th Q. Look at the map marked "Map No. 1," prepared by Mr. Julius K. Monroe, surveyor in this cause, and if you can, point out on that map the tract of land upon which you live.

A. The tract right there, (indicating).

70th Q. The tract with the words "A. Fike" written in it?

A. Yes, that is my piece of land.

71st Q. Of what original tract does it constitute a part?

A. A part of the A. D. Wiles.

72nd Q. Part of the A. D. Wiles farm?

A. Yes, sir.

73rd Q. Who did he buy it from?

A. I don't know who he bought it from, but Abram Wiles bought it from A. D.

74th Q. To whom was the patent, if you know?

Exception by counsel for the State of Maryland.

A. I cannot tell that; I do not know.

2630 75th Q. Will you point out where your father lives, on this map?

A. Where he lives at present?

76th Q. Where he lived when you were born?

A. Why, there (indicating) is where he was on his tract. This is his tract.

Exception by counsel for the State of Maryland.

The WITNESS: On the Peter Fike farm.

Exception.

77th Q. I notice two pieces on the map marked "Peter Fike" lying west of a tract marked "Chris. Wiles." Was it on one of those tracts?

A. Adjoining that.

78th Q. Do you know from whom your father got that land?

A. He bought it of grandfather, but really I could not tell you who grandfather bought that from. I couldn't tell you that.

79th Q. Did you ever hear of a tract called the Goff land?

Exception by counsel for the State of Maryland.

A. I do not know anything about the Goff land at all.

80th Q. Who owns the land just north of you along the Maryland line, at present?

A. Silas Fike owns the first piece, and Henry Beckman next, and Lloyd Dawson next.

81st Q. Is that piece marked "J. C. Dawson" on the map?

A. Yes, sir.

82nd Q. Next above Dawson next to the Fike—do you know who owns the land in there?

A. Offutt next to Dawson, owns the land.

83rd Q. What Offutt is that?

A. Lee Offutt.

84th Q. Where does he live?

A. He lives in Oakland, Maryland.

2631 85th Q. Who owns the land south of you along the line?

A. There comes William S. Weimer next.

86th Q. Then give the names on south?

A. Then Adolphus Fike, Dennis Biser, C. P. Jones, Obid Hamstead, Eli Slaughbaugh. I believe that is all. I am not sure whether Frederick runs out to the line or not. Of course, I can give a little farther.

87th Q. Give *give* them on as far as you can, Mr. Fike?

A. Elijah Bachtle, I believe, comes in next, and then Creed Stemple, then Charlie Winters. That is as far as I know, who does run down to the line from there on. I could not tell you. There is several in there, but whether they run clear——

88th Q. Whether they run clear to the line you do not know? Is that what you were going to say?

A. Yes, sir; I do not know just how the lines run in there.

89th Q. Take the lands in west of you, between your property and the line run by Mr. Brown. Who owns the land in there?

A. Len Simmons owns a little tract in there, just a small piece, and George Winters, and then Bush and Switzer. They run through their farm.

90th Q. What Bush?

A. Lewis Bush.

91st Q. What Switzer?

A. Daniel Switzer.

92nd Q. Do you know Joseph Rembold?

A. Yes, sir.

93rd Q. Where does he live?

A. He lives south of me.

94th Q. How far?

A. Well, it is in the neighborhood of four miles or may be a little over that.

95th Q. East or west?

A. South.

96th Q. East or west of the line run by Mr. Brown?

2632 A. I guess he must have split through his farm.

97th Q. Do you know where Mr. Rembold votes?

A. Yes, sir.

98th Q. Where?

A. West Virginia, at Eglon.

99th Q. Where is the voting precinct?

A. At Eglon.

100th Q. Where is Eglon?

A. It is in Union District.

101st Q. Then what direction from your residence and how far?

A. It only lacks about eight rods of being two miles.

102nd Q. What direction?

A. West.

103rd Q. Is this country extending from the Backbone mountain to the Northwestern turnpike cleared up and settled or wild land?

A. Part of it is cleared up, and part of it ain't.

104th Q. To what extent is it cleared country?

A. I could not just say. It is pretty well cleared up, from the foot of it, it is pretty well cleared up.

105th Q. How long has that country been cleared up and settled?

A. That is something I do not know whether I could tell you.

106th Q. So far as you know?

A. As far as I know.

107th Q. Always been so since you recollect?

A. Yes, sir.

108th Q. I will ask you to state whether or not in your opinion your tract of land is correctly laid down on this map No. 1 with reference to its relation to the adjacent lands and to the Michler line, and the old line?

A. Yes, sir; I think it is.

109th Q. And so far as you know, the lands in that neigh-

2633 borhood—do they appear to be correctly laid down?

A. Yes, sir; they look natural to me along the way the line runs, as laid down on this map—they are right.

110th Q. I will ask you, Mr. Fike, as to your knowledge of the old state line along the country which you have been speaking about—whether it is a continuous line or a broken line.

A. Well, I do not know, I never run it. So far as I know it runs all——

111th Q. Do the people who adjoin you claim to the same line?

A. Yes, sir. It runs in a straight line, so far as I know.

112th Q. So far as you know the tracts of land, that is the case?

A. Yes, sir; as far as I know.

113th Q. Do you know where the Fairfax stone is?

A. I never was there.

Cross-examination:

114th Q. Mr. Fike, did you see the old line run, that is, the Michler line?

A. No, sir.

115th Q. You know nothing about the line then except from information?

A. That is all I know, just what others told me, as I stated before.

116th Q. I believe you have stated that the Michler line runs through your property?

A. Yes, sir, a little bit of it, I believe. So I am informed anyhow. That is all I know.

117th Q. Do you know whether the lines of the Michler line are defined?

A. No.

118th Q. They are not?

2634 A. I don't know how about that.

119th Q. You have stated the names of the citizens who reside on the north and south of you. Can you state whether the line known as the Michler line, or as you have stated the line that has been pointed out to you as the Michler line,—do you know whether that line through the north and south is defined or marked?

A. I do not think it is.

120th Q. How do you know then where the Michler line is?

A. It is just what others told me. On my place when I bought it there was a stake sticking in, and the man that I bought it of, says, "That is where it ran." That stake is gone, rotted, and I couldn't find it, and that is all I know about it.

(By Mr. PRICE:)

121st Q. Who was the man that pointed out that stake to you?

A. Abram Wiles.

122nd Q. And he is the man that I think you said had lived there?

A. Yes, sir. I do not know whether he lived there when the line was run or not. I could not say that, but——

123rd Q. As far as you can recollect, he lived there?

A. Yes, sir.

124th Q. Do you remember whether he said he *was* the line run or not?

A. I do not remember whether he did or not. I could not say.

125th Q. Were you present when Mr. Julius K. Monroe ran a line through there in 1894?

A. I saw him go through, yes, sir. I wasn't with them at all, only just——

126th Q. Where did that line run with reference to the

2635 location of the Michler line as pointed out to you by Mr. Wiles? Was the Monroe line east or west of that?

A. East.

126th Q. About how far east?

A. I could not tell exactly how far it was.

127th Q. Without being accurate, what would be your best judgment?

A. Well, eight or ten rods, along there. I could not tell exactly. May be more.

128th Q. Did Monroe's line run east or west of what you recognized as the old Maryland line?

A. I think there at my place, as well as I remember, it was pretty near on the old line—as well as I remember.

And further this deponent saith not.

(Signature of witness waived by stipulation of counsel.)

2636 H. A. SHAFER, a witness produced on behalf of the State of West Virginia, having been duly sworn, deposes as follows:

(Examined by Mr. PRICE:)

1st Q. Please state your name.

A. H. A. Shafer.

2nd Q. Your age?

A. Fifty-nine.

3rd Q. Your place of residence?

A. I live in Union District, Preston County, Brookside.

4th Q. And your occupation?

A. Farmer, at present.

5th Q. How long have you lived in that neighborhood?

A. All my life time.

6th Q. Have you always lived where you now lived?

A. Yes, sir; born and raised, and lived right in the same house.

7th Q. Do you own the land you live on?

A. Yes, sir.

8th Q. How long have you owned it?

A. I believe I bought it in 1896.

9th Q. Who did you buy it from?

A. Isaac Shafer's heirs—my father, My father's heirs.

10th Q. Your father was Isaac Shafer?

A. Yes, sir.

11th Q. Had he lived on the land before you got it?

A. Yes, sir; ever since I can recollect.

12th Q. He was living there, of course, when you were born there?

A. Yes, sir.

13th Q. And where did he get the land from? Do you know?

A. According to the deed, he got it from my grandfather.

14th Q. Who was he?

2637 A. —T. Walt Shafer.

15th Q. Do you know where your grandfather got it?

A. I cannot tell you, only by the deed.

Excepted to by counsel for the State of Maryland, on the ground that the deed is the best evidence.

A. He got it from a man by the name of Goff. That is the old original deed. That is all I can go by.

16th Q. That land, then, according to your understanding and the tradition in your family has been in your family how long?

A. Well, I think the old deed is dated the 27th day of November, 1815. I am sure it is; it has been copied.

Exception by counsel for the State of Maryland as to the date of the deed.

The WITNESS: I looked at it just before I came over here.

17th Q. Do you know where the line that was run by Lieutenant Michler is?

A. Yes, sir; I know where it is a great many places. I used to know. It has growed up a good deal. I could not trace it now.

18th Q. What information have you about that line?

A. I was a boy when my brother worked on the line, and I used to carry his dinner there, and would go there and generally stay with him until night, boy like. Michler chopped out a very wide line.

19th Q. Where is that line with reference to your residence?

A. Well, it is east.

20th Q. How far east?

A. Well, it is a hard question to answer. It is I suppose a mile or a mile and a quarter right direct east.

21st Q. Do you know where a line is that was run by Mr. W. McCulloh Brown in 1897 northward to the Pennsylvania line?

2638 A. Yes, sir; I knew where he went through that country.

22nd Q. Did you see that line run?

A. Yes, sir; I seen him go.

23rd Q. Where does that line run with reference to your place?

A. It is west, goes through my place, but west of my house, where I live.

24th Q. How far west of your house?

A. I suppose it is about fifty feet. I do not think it is farther than that. It is there close.

25th Q. What, if anything, had you known of any state line being in that locality before Mr. Brown ran it?

A. I never knew but the old one and the Michler line.

26th Q. Where is the old one that you spoke of just now?

A. Well, it is still east of the Michler line.

27th Q. About how far east?

A. Well, I just have to go by what people showed me. I wasn't there when that was run.

Exception to the answer by counsel for the State of Maryland.

The WITNESS: Well, I don't know.

28th Q. As near as you can estimate it, where is the old line recognized along there by the people?

A. You mean exactly east—I don't know—well, it is ten or fifteen rod, I would say, close to that. I could not tell. It has been a long time since I have been in there.

29th Q. Have you ever had anything to do with working the roads in that country?

A. Yes, sir, I worked the roads there, for I couldn't tell you how long, fifteen or eighteen years, somewhere along there.

30th Q. Is there any road in that neighborhood running across the state line?

2639 A. The one I worked runs across the state line.

31st Q. Where?

A. The old road I worked goes past my farm, and down the river.

32nd Q. Where?

A. The Yough. I live on Rhine creek, and the road I worked follows down Rhine creek or close to Rhine creek until it strikes Yough, and where it goes along Yough it ain't more than fifty feet from there some places, goes right along the bank of the creek, and I worked along there, worked to the old line.

33rd Q. Well, how far is it that you worked that road, with reference to the state lines? To what line did you work?

A. I was supposed to work to the old original line, the Deakins line. The lines go this way, (illustrating) and the roads go the other way. It is a hard question for me to answer just the distance.

34th Q. I don't want the distance?

A. I worked to the old original line.

35th Q. When you say you worked,——

A. I worked my men. I worked as supervisor there for I cannot tell you how long. I quit last spring a year. I worked until I got worked out on it, and quit, but I cannot tell you how long. I cannot tell when I commenced. I worked ten, twelve, or may be fifteen years.

36th Q. Appointed by what authority?

A. West Virginia.

37th Q. By what authority?

A. The Court.

38th Q. What Court?

A. The county court—Part of the time I worked under a man—I finished out one end of the district for a man that was ap-

2640 pointed by the court, and I turned my reports in to another man. I was deputized. I gave my reports in here to the court of Preston County.

39th Q. What court is it?

A. The county court of Preston county.

40th Q. The county court of Preston county, West Virginia?

A. Yes, sir; I turned it over to the commissioner rather of our district.

41st Q. You were appointed also road supervisor?

A. I was deputized under the regular appointee.

42nd Q. Your authority was derived under the county court of Preston County, West Virginia?

A. Yes, sir.

43rd Q. How long did that continue?

A. Why, that is a question I don't know, fourteen or fifteen, or may be sixteen or eighteen years. I do not know how long I did work it.

44th Q. Up to what time?

A. I quit last January a year ago.

45th Q. Who is the road supervisor now?

A. Washington Fike, works the same as I did.

46th Q. Do the Maryland authorities work or attempt to work the roads beyond that old line westward?

A. Well, we lap a little bit down there where I went across. We run road graders there, and right where the line is, I turn in Maryland and they turn in West Virginia. There is no place to turn where the line crosses. It is very narrow. They generally let their road grader drag, the same as I did.

47th Q. They dragged their machines over to turn?

A. Yes, sir, and so we lapped over, both sides.

48th Q. Did they come over as far as the Michler line?

2641 A. No, sir.

29th Q. Do you know where the line was run by Mr. Julius K. Monroe in 1894 along there?

A. I know where it crossed the road just from being showed. I did not go there.

30th Q. You did not see it?

A. No, sir.

31st Q. Do you remember where that line is with reference to the old state line along there? Is it east or west of it?

A. The old state line is still farther east, where it has been pointed out to me.

32nd Q. Monroe's line is between the Michler and the old state line?

A. Yes, sir; where it has been shown to me.

33rd Q. Will you look at the map now shown you marked "Map No. 1," prepared by Mr. Julius K. Monroe, surveyor in this cause, and state whether your land is represented on that map, and if so, how?

A. I do not know very much about a map. It must be right in there as I understand it.

34th Q. What word is on the map there?

A. "T. Shaffer."

35th Q. Look at the line marked "Rhine Creek," and the stream marked "Youghhiogheny river,"—do they appear to be correctly laid down on the map?

A. Well, looking at the map and taking the other surveys, the other lines, that is about the way it goes. I live right in here (indicating).

36th Q. Who lives north-east of you?

A. Washington Fike lives north east of me. The house is very near north, but the farm is northeast.

37th Q. Is your house east or west of the line run by Mr.

2642 Brown?

A. The house is east.

38th Q. Is Mr. Washington Fike's house east or west of that line?

A. His is east.

Mr. BENNINGER: Enter an exception to those questions, those two questions.

39th Q. Who owns the land south east of you, and lying east of the Brown line?

A. Offutt, south. You asked me south east. E. E. Offutt south east.

40th Q. Where does the public road which you speak of having worked run with reference to the streams, eastward?

A. Well, it goes north east.

41st Q. What streams does it follow?

A. Along there by me on Rhine, and then it kind of bears off and follows down Yough, Some places it is close to Yough, and some places it is off.

42nd Q. Does it cross Yough?

A. No, sir.

43rd Q. Does it cross the Michler and old state line north of where the Yough crosses it?

A. Yes, sir.

44th Q. I call your attention to the representation of a road near the figures "300" on the map, and ask whether that would be a correct representation as to the location of that road?

Exception by counsel for the State of Maryland.

A. Well, the road gets very close to the Yough river on that.

45th Q. Who owns the land east of Washington Fike, between that and the old State line, as you remember it.

A. As I understand the question, I think the Preston Lum-
2643 ber Company. It changes hands so often, I can't keep track of it.

47th Q. Who formerly owned it?

A. A man by the name of Bowman owned it, and he sold it to Johnson, and I think it is in the Preston Lumber Company's hands, but it is the Bowman tract. In fact, the Wotring tract and that were all one tract. My brother used to own the Fike tract.

48th Q. Now, going along the line northward between the Brown line and the old state line, as you recognize it, will you give the names of the land owners and people living in there?

A. Back of the Northwestern pike?

49th Q. Going from the northwestern pike northward?

A. You want the men that live there at the present time?

50th Q. Yes.

A. A man by the name of Amos Shellenberg.

51st Q. He lives on the Offutt farm?

A. Yes, he has Offutt's farm. Well, Shellenberg lives on the south side of—the other man's name is Parnell that lives there, but I do not know his initials. Ed Parker, William Ewitt, Jesse Roomers, Job Roomers, F. S. Roomers, John Beckner, Lee Guthrie, Charlie Foulk, Eusebius Ashby. There is a couple of men still that live back there in the woods, Do you want their names still?

52nd Q. Yes.

A. They were there just a short time ago. Henry Packer and John Noon; Dorsey Ashby. I skipped him. That is all the people that lives in there.

53rd Q. How far north does that take you?

A. Why, I suppose it is two miles from the road. That is
2644 right below me. You mean where I commenced?

54th Q. No. You commenced at the Northwestern pike. Who was the farthest north man you have given?

A. Packer and Noon.

55th Q. What tract of land are they on?

A. I suppose they are on the Preston Lumber Company's tract. They are Preston Lumber Company men. I don't know whose.

56th Q. How far does the Preston Lumber Company's land extend north of you?

A. That is a question I cannot answer, but I can guess at it—but I cannot answer it.

57th Q. Well, give your best estimate?

A. Follow Mr. Brown's line through, I guess. It will be about—well, I will say three miles. I cannot tell. A man gets out there in that laurel, and he thinks it is a good ways.

58th Q. Have you named all the residents as far north as the Northern part of the Preston Lumber Company's property?

A. No, sir. I worked as far as our district line goes, and I just went to Laurel run. It runs into the next district. I don't know who the folks are on the other side. I know some of them, but it has been years since I have been in there.

59th Q. Do you know where the people you name vote, whether in Maryland or West Virginia?

A. They vote in West Virginia.

60th Q. Where is the voting place?

A. Aurora.

61st Q. Where is that with reference to this country?

A. From where I live?

2645 62nd Q. Yes.

A. It is about south-west, I guess. I think it is three miles from where I live.

63rd Q. How do you know they vote there?

A. I served as commissioner of election there for sixteen or eighteen years, and I know they vote there, for I saw them every election.

64th Q. Do you know where they pay their taxes?

A. I suppose if they pay them at all they pay them in West Virginia. They pay their dollar in West Virginia, I know.

65th Q. How do you know?

A. I assess them myself, and they gave it to me, and I gave them receipts.

66th Q. Is that the capitation tax?

A. Yes, sir.

67th Q. In what State?

A. West Virginia.

68th Q. How did you collect that tax?

A. I collected it in June this year.

69th Q. How did you come to collect it?

A. The assessor was appointed, and he deputized me to assess the wilderness, he called it. He sent me in there—Mr. Jackson.

70th Q. Have you ever known any of the Maryland tax collectors to be over in that country collecting taxes?

A. No, sir.

71st Q. Where do these people send their children to school?

A. They send them, down until you get to the wilderness, they send them in West Virginia, and those in the wilderness don't send their children at all, I guess. There is no school close. What I call the wilderness, the railroad ran up there, and there is lumber men up there.

2646 72nd Q. What property is this wilderness?

A. The Preston Lumber Company owned it.

73rd Q. Why do you call it a wilderness?

A. It is all woods, and no farms.

74th Q. Who is the Preston Lumber Company, who are the people?

A. I cannot tell you, only the ones there in our country, that is, the supervisors or foremen. That is about all I can tell you.

75th Q. Who were they?

A. The first one in there that I know was a fellow by the name of White and McClelland, and the last ones was Mr. Stahl, and George Porter. Then there is another one in there, too, but they change so often I do not know—I can't just call their names now. That is the men that I knew.

76th Q. I do not believe I asked you where your own land is assessed, and where you pay taxes?

A. I pay taxes in West Virginia, and it is assessed there.

77th Q. And you vote in West Virginia?

A. Yes, sir.

Cross-examination by Mr. PENNINGER:

78th Q. Do you know where the Michler monument is?

A. Yes, sir.

79th Q. Isn't it a fact that both West Virginia and Maryland work the roads to that point?

A. Well, I don't know. You see I do not work on that road, and travel that road but very little. When I go to Eglon, I go the other way. I do not pass that place sometimes for two years. Sometimes I pass along there, and it looked like Maryland had worked

2647 down to that rock on the pike.

— Q. What rock have you reference to?

A. The Michler monument. I couldn't tell you. I never worked in there. I don't know, which one worked, but it was worked clear down there.

And further this deponent saith not.

(Signature of witness waived by stipulation of counsel.)

2648 DANIEL J. NORDECK, a witness produced on behalf of the State of West Virginia, having been duly sworn, testified as follows:

(Examined by Mr. PRICE:)

1st Q. Please give your name, your age, your residence, and your occupation?

A. Daniel J. Nordeck is my name; age fifty years old; I live in Portland district, about five miles from Terra Alta. My occupation is farmer.

2nd Q. Do you own the tract of land where you live?

A. Yes, sir, I own a tract of land there.

3rd Q. How much—what quantity of land?

A. Well, there is about one hundred and seventy acres of land that I own.

4th Q. How long have you lived on it?

A. Well, I have lived there since about 1883, I believe.

5th Q. Have you owned it since then?

A. Yes, sir.

6th Q. From whom did you purchase it?

A. I purchased of my father.

7th Q. What was his name?

A. His name was John P. Nordeck.

8th Q. Did he live on that land?

A. Yes, sir.

9th Q. Is he still living?

A. No, sir; he has been dead about fifteen or sixteen years, I reckon.

10th Q. How long had he lived on that land?

A. Why, I suppose he had probably lived on the land for fifty years. He bought it when it was in woods. I suppose about fifty years, more or less.

11th Q. Before you bought it?

A. Before I bought it, yes, sir.

2649 12th Q. Do you know from whom he bought it?

A. Well, no, I ain't sure about that, but it belonged to an Ashby survey of five hundred and some acres, I think, was in the tract he bought it from, and probably he bought it of Saucer. I ain't sure about that.

13th Q. Do you know where the line run by Lieutenant Michler in 1859 is in that neighborhood?

A. I do not understand what line that is. Is that the old Maryland line——

14th Q. Not the one called the old Maryland line, but the one run just before the war.

A. No; I do not know where that line is. I do not know anything about that line myself.

15th Q. Do you know where the line is that was run by Mr. Julius K. Monroe in 1894?

A. Well, now, was that the new Maryland line, as it is called? There was a line run through there that I understand was a new

Maryland line, they called it. I know where that line is. That is, I know where it was supposed to run. I saw where the woods had been cut down, the pathway where the line was supposed to be run.

16th Q. How long have you known that line?

A. Since it was run, since about 1894, I suppose.

17th Q. Then, where have you recognized the state line to be along there?

Exception by counsel for the State of Maryland.

A. That is, the old Maryland line——

18th Q. No. Where do you consider the state line to be, the boundary line?

A. Well, I suppose that is about two miles probably east of where I live.

19th Q. Two miles east of where you live?

2650 A. Yes, sir.

20th Q. Do you know where Mr. Brown, surveyor in this case, ran a line in 1897?

A. Well, now, I may be getting things mixed up a little. Did Mr. Monroe and Mr. Brown run the same line?

21st Q. They were all together, but Mr. Brown ran one and Mr. Monroe ran one?

A. Yes, sir, I know where that line was supposed to be run.

22nd Q. Where is that with reference to your place?

A. Well, that just runs east of where I live?

23rd Q. How close to your house?

A. Well, it is not more than—it is not a quarter of a mile quite.

24th Q. Does it run through your land?

A. It may possibly cut off a little of my land, but very little, if any.

25th Q. Did you ever hear of any state line being there before that line was run?

A. Yes, sir; that is, the Maryland line, yes, sir.

26th Q. Before that line was run?

A. Yes, sir.

27th Q. Near to your house?

A. No, the old——

28th Q. I am asking you if you ever knew any state line to be where this line was run near your house before it was run?

A. No, I never heard of anything like that.

29th Q. Where then had you understood the state line to be prior to that?

A. About two miles east of where I live.

30th Q. Is your land assessed for taxation in Maryland or

2651 West Virginia?

A. In West Virginia.

31st Q. Where do you vote?

A. I vote in West Virginia.

32nd Q. And work the roads?

A. Yes, sir; I work the roads in West Virginia.

33rd Q. Have you worked the roads eastward from your place?

A. Why——

34th Q. Or have you any roads that run east and west?

A. We have no roads running east and west where I live.

35th Q. I will ask you to look at the map No. 1, prepared by Mr. Julius K. Monroe, surveyor in this cause, and I will ask you whether your house is north or south of the Preston Lumber Company land?

A. Well, it is west.

36th Q. Are you west of the Preston Lumber Company?

A. Yes, sir.

37th Q. Do you adjoin it?

A. No, sir, I think not.

38th Q. Who owns the land north of you?

A. Well, Samuel De Berry. His son owns it now, and then another man by the name of William Hollis lived or owned land north of me.

39th Q. Did they live west or east of the line run by Mr. Brown?

A. I think the line ran by Mr. Brown ran right through Mr. Hollis' farm, and ran through part of Mr. De Berry's land. The biggest part of that laid east of this line.

40th Q. Who lived on the land between where you lived and the old Maryland line?

A. Mr. Crane owns a farm between where I live and the old Maryland line.

41st Q. Which Crane?

2652 A. Samuel B. Crane did own it. Edgar Crane owns it now.

42nd Q. How long has he lived there?

A. Since I can remember. He has lived there for a number of years.

43rd Q. How far would that be east of the Brown line?

A. The Brown line ran through his farm, near the house, but whether it was on the west side or east, I do not know. It ran very near his house, so they told me.

44th Q. Do you know of any tract of land known as the Schoolfield land?

A. Yes, sir, I know that tract of land.

45th Q. Where does that lie with reference to your place?

A. It lies northeast of where I live.

46th Q. Where does it lie with reference to the old Maryland line?

A. Part of that lies in—most of it, a part of it lies in Maryland probably. I ain't sure about it. The biggest part of it lies in West Virginia, I guess.

47th Q. Does it lie along the line?

A. Yes, sir.

48th Q. Do you know a tract of land owned by Fredbock?

A. Yes, sir; I knew that tract of land.

49th Q. Where is that with reference to where you live?

A. That is northeast of where I live.

50th Q. Who lives on that?

A. A man by the name of Sisler lives there now.

51st Q. Who owns the land north of Fredbock?

A. A man by the name of Jennings owns a small farm north of Fredbock now, and a man by the name of Fraley owns a piece in there, and then another man probably by the name of Shafer. There are several small tracts of land along there.

2653 52nd Q. These people that you have mentioned—do you know where they vote?

A. Yes, sir; they vote in West Virginia.

53rd Q. Where is the voting place?

A. At Corinth.

54th Q. Is that on the Baltimore & Ohio railroad?

A. Yes, sir.

55th Q. Still farther north?

A. Yes, sir, it is farther north.

56th Q. Where do you vote?

A. I vote at Corinth.

57th Q. Officers of what state do you vote for—do you vote for Governor of West Virginia or Governor of Maryland?

A. Governor of West Virginia.

58th Q. Who owns the land just south of you?

A. Why, Mr. Van Worth owns a piece of land just south east.

59th Q. Then who is next to him south?

A. Well, I will tell you, it is not settled up in that country, I do not think, no one living close south?

60th Q. Who owns the land, do you know?

A. The Preston Lumber Company, I believe, owns it.

61st Q. Your land lies north then of the Preston Lumber Company land?

A. It lies rather west—northwest.

62nd Q. Does the Preston Lumber Company have land between you and the old Maryland state line?

A. Now, their land probably is rather south of mine. I think it is. They may not run north quite as far as mine. There is part of mine anyway, some of my land, lies west of theirs, but most of it, I guess lies north, really—northwest.

And further this deponent saith not.

(Signature of witness waived by stipulation of counsel.)

2654 Ross CUPPET, a witness produced on behalf of the State of West Virginia, having been duly sworn, deposes as follows:

(Examined by Mr. PRICE:)

1st Q. Give your name, age, place of residence and your occupation.

A. Ross Cuppet; forty-six; Preston county, farmer.

2nd Q. How near do you live to the Pennsylvania state line?

A. My land adjoins the Pennsylvania line, and my house is probably a quarter of a mile.

3rd Q. Do you know where the line is that was run by Mr. Brown in 1897, to the Pennsylvania line?

A. Yes, sir. I know where it is through my farm.

4th Q. Where does it run with reference to your house?

A. It runs east of my house.

5th Q. How far east?

A. Possibly 100 rods, or may be a little more.

6th Q. How much land have you in there.

A. Three hundred and twenty acres.

7th Q. What portion of your land extends beyond the line run by Mr. Brown?

A. Thirty-five or forty acres, I suppose.

8th Q. Do you know where the Michler monument is on the Pennsylvania line?

A. Yes, sir.

9th Q. Will you state whether that has been recognized by the inhabitants of that section as the corner of the state line of West Virginia?

A. All I could say that it has been recognized, where it used to be recognized as strangers that would come into that community, would go there to see where the corner stone was between the two states.

10th Q. The people living there—where do they claim the
2655 state line to be?

Objection by counsel for the State of Maryland.

A. They claim it *be* be farther east.

11th Q. What information have you on that question?

A. As to where they claim it to be?

12th Q. Yes.

A. Well, the way I would know that they claimed that to be farther east, is they pay their taxes, and they vote and work the roads farther east.

13th Q. Who has pointed out to you the line along there?

A. I never had the line pointed out. I know nothing about the line. I only know where the monument is.

14th Q. Well, I mean the state line?

A. I never had the state line pointed out to me exactly. That is not settled up very much there, only where—I used to be a road supervisor there. It was pointed out to me where I was to work the roads to.

15th Q. Who pointed it out?

A. Well, the citizens there.

16th Q. Can you name any of them?

A. Well, yes; Joseph Niner, Owen Evans, two or three of the Fikes that lived in there.

17th Q. How long have you lived where you now live?

A. Lived there all my life, with the exception of a couple of years I was away.

18th Q. Where did you get your land from?

A. My father.

19th Q. Who was he?

A. A. Cuppet.

20th Q. Where did he get it?

A. He bought it of a commissioner. Thomas Scott was ap-

pointed a special commissioner by the court, and made a
2656 deed to him.

21st Q. Whose land was the commissioner selling?

A. His father's land—my grandfather's land, Daniel Cuppet's.

22nd Q. So that this land, as you understand it, has been owned by your grandfather, and your father and yourself?

A. And by grandfather also.

23rd Q. How far east did it extend with reference to the Michler monument? Did it go as far as that?

A. No, sir. It is possibly three-fourths of a mile west, at the farthest point of it east.

24th Q. Now, who owned the land then lying east of this land of your fathers?

A. Why, Silas Beerbower and Martha Miller and Joseph Niner, and—oh, you mean to the Michler line?

25th Q. No, lying east, clear on to the old state line?

A. To the old state line?

26th Q. As far east of that Michler line as that state line to which you worked the road?

A. I don't know where this Michler line would run——

27th Q. I mean, how far east of the Michler monument?

A. The road crosses out of Pennsylvania into West Virginia there. There is no road there into Maryland. It crosses into Pennsylvania.

28th Q. Assuming that the Michler line ran due south from that stone, would it be east of that line, where you worked the road?

A. Yes, sir.

29th Q. About how far east?

A. Between a quarter and half a mile, I would suppose.

30th Q. Do you know where Abram Thomas' house is?

A. Yes, sir.

2657 31st Q. Is it east or west of the Michler monument?

A. East.

32nd Q. Where does he vote?

A. West Virginia, or did while he was living.

33rd Q. Where was the voting place?

A. Glade Farms.

34th Q. And you mentioned Niner? Where does he vote?

A. Glade Farms.

35th Q. And Fike?

A. Fike? Glade Farms. That is, which Fike is that?

36th Q. The one you have mentioned? You mentioned some Fike I believe.

A. That would be Abram Fike there. There used to be an Elijah Fike lived there, too.

37th Q. Did he live in West Virginia?

A. Yes, sir.

38th Q. West of the old state line?

A. Yes, sir; lives right by it. There is where the road was that I worked, near where he lived.

39th Q. Elijah Fike?

A. Yes, sir.

40th Q. Is there a house there now?

A. Yes, sir.

41st Q. Who owns the land south of you and east of the line run by Mr. Brown?

A. Well, you mean in that it would cross or just that that it wouldn't cross?

42nd Q. Well, any that it would cross and any that it would not cross, too.

A. Well, Joseph R. Miller, Lee Cuppet, Silas Beerbower, Joseph Niner, N. M. Thomas, a man by the name of Lewis, and Mrs. Owen Evans, Abram Fike and Elijah, tract owned by Isiah Umble
2658 at this time, and Mrs. John Van Sickle, Charlie Van Sickle, Elias Van Sickle, Albert Robinson, James Spurgin, Truman Frazee, Joseph Guthrie, Samuel Lininger, and Jesse Fike, Sylvanus Fike, and I believe Ross Frazee and Zelman Cuppet, would be the most I recollect now, as far as Grant district runs across there.

43rd Q. As far south as Grant district runs? To what stream or mountain?

A. There is no stream or mountain there at the line that I know of. It is right he*ar* where Edward Jones lives.

44th Q. Is it as far south as where Marshall Fre*i*nd lives?

A. Yes, sir, Marshall Friend,——

45th Q. Is he in Grant district?

A. He is in Heaven, I hope. He used to live in Grant district.

46th Q. Do you know where those people you have named vote?

A. Yes, sir.

47th Q. Where?

A. They all voted at Glade Farms.

48th Q. How long have they voted there?

A. There has been a poll there—the ones old enough vote—twenty-five years I suppose. They used to vote at Brandonville.

49th Q. And they voted for officers of what state?

A. West Virginia.

50th Q. Do you know where they paid their taxes?

A. In West Virginia.

52st Q. Where do their children go to school?

A. West Virginia, all of them, as far as I know.

52nd Q. Where is the school-house?

A. There is two or three or four school houses strung out across the lower end of Grant district there, Cuppet school house,
2659 and North Avenue school house and south avenue school house—three.

53rd Q. These schools supported by taxes from what state?

A. West Virginia.

54th Q. I don't know whether I asked you or not, but before the line was run through your place by Mr. Brown in 1897, had you ever heard of any state line being claimed to be along there?

A. No, sir.

55th Q. Do you know of any of the inhabitants ever recognizing the Michler line as the state boundary line?

Excepted to by counsel for the State of Maryland.

A. No, sir.

2660 1 O'CLOCK, P. M., *July* 19, 1906.

D. B. GROVES, a witness produced on behalf of the State of West Virginia, having been duly sworn, deposes as follows:

(Examined by Mr. PRICE:)

1st Q. State your name, your age, your residence and your occupation?

A. Groves; 32 years, Terra Alta; you mean my post-office?

2nd Q. No, I mean where you live?

A. Well, I live about half way between Terra Alta and Cranesville, known as the Oak Grove settlement.

3rd Q. And your occupation?

A. Farmer.

4th Q. How long have you resided at your present residence?

A. I was born there and raised there.

5th Q. Do you own any land there?

A. Yes, sir; 106 acres.

6th Q. From whom did you get the title?

A. You mean, who was it from——

7th Q. Who did you get it from?

A. It was deeded to me by father, W. H. Groves.

8th Q. And where did he get his title from?

A. From Mr. Brown, I believe, was where the land was bought from.

9th Q. What Brown is that?

A. Thomas Brown that used to live here in Kingwood.

10th Q. James A. Brown's father. Was it a part of a larger tract?

A. I guess it was. I do not know so very much about that, though, but I——

11th Q. Do you know where Brown got it from?

A. No, sir.

2661 12th Q. Now, did your father live upon this tract of land?

A. Yes, sir.

13th Q. Did anybody live on it before he did?

A. I do not know. Not that I know of.

14th Q. How long did your father and have you together lived on this land?

A. Something like thirty-five years, I expect.

15th Q. Has it been assessed for taxes in West Virginia or Maryland?

A. West Virginia.

16th Q. To whom have the taxes been paid?

A. They have been paid to West Virginia.

17th Q. To the sheriff of what county?

A. To the sheriff of Preston county.

18th Q. Where have you and your father voted since you lived on that land?

A. At Terra Alta.

19th Q. Did you vote for officers of the State of Maryland or the state of West Virginia?

A. The State of West Virginia.

20th Q. In what county?

A. Preston county?

21st Q. Who owns the land lying north of you?

A. John Metheny and Mr. Lee.

22nd Q. What Lee?

A. M. J. Lee.

23rd Q. Going on north of them?

A. John R. May and M. H. Taylor.

24th Q. And north of them?

A. Methenys.

25th Q. Did you see a line run in that neighborhood in 1897, a duo north line?

2662 A. There was a line run through there. I did not see very much of it run, but there was one.

26th Q. Was that the line run by Mr. Brown, and was Mr. Monroe along?

A. They said Monroe was along, but I did not know him for my part, but I guess he was with them.

27th Q. Where did that line run with reference to your place?

A. Well, it cut off about one-third of it, run right there close to my house, through my orchard.

28th Q. Which side of the line is your house on?

A. On the east side?

29th Q. How far from the line?

A. About 3 rod, I reckon.

30th Q. How far are you from the state line as it has always been recognized and known to you?

A. Something about a mile and a half or two miles.

31st Q. Which direction from you?

A. East from me.

32nd Q. Had you ever known of any claim being made of there bring a state line through your place before this line was run there in 1897?

Exception by counsel for the State of Maryland.

A. No, sir.

33rd Q. Now, will you name, as far as you can the people that live between the old state line, and which you have spoken of, and this new line that was run through there. Name the residents in there so far as you can?

A. Greeley Teets, Henry Lewis, Lee Groves, Wesley Lewis, Mose Groves, Frances Metheny, Silas Titson, Ed Ross, W. T. Groves,

Thomas Spahr, William Lewis, Preston Ringer, Henry Ringer, Jim Ringer, Age Hayes. There are others, but I believe I cannot recall them now.

34th Q. Do all those that you have named live between
2663 this new line that was run in 1897, and the old state line as you have always understood it?

A. Yes, sir.

35th Q. And how far north have you gone in naming the people from your place?

A. Nearly to Cranesville.

36th Q. And how far south?

A. About half way to Terra Alta.

37th Q. Do you think you have gotten everybody that lives in that space, from half way to Cranesville?

A. I expect not quite—nearly, though. There is Jeff Friends is another one, and Mike Friends—all live together.

38th Q. Where do all these people that you have named vote?

A. At a general election they vote at Terra Alta, and at a primary they vote at Terra Alta and Cranesville.

39th Q. When they vote at Terra Alta and Cranesville, do they vote under West Virginia law for West Virginia officers?

A. Yes, sir.

40th Q. Have you ever known Maryland to hold any election in that section?

A. No, sir.

41st Q. Have you ever known any Maryland officer to collect taxes in that section?

A. No, sir.

42nd Q. Have you known of any exercise of jurisdiction by the State of Maryland over any of the territory you have named?

A. None whatever.

43rd Q. Do you claim to hold your land under Maryland or West Virginia title?

Exception by the counsel for the State of Maryland.

2664 A. West Virginia.

44th Q. Did you ever hear of a tract of land patented by the State of Maryland called "Nonpariel?"

A. No, sir.

45th Q. Is there any such tract in your neighborhood that you know of?

A. None to my knowing.

46th Q. Do you know whether any of the people in that neighborhood claim under a Maryland title?

A. Not that I know of, they do not.

47th Q. Have you any schools in your neighborhood?

A. Yes, sir.

48th Q. Where is your school house?

A. White Oak spring is the name of our school house.

49th Q. What direction and how far from your house?

A. About a quarter of a mile, and just about due east.

50th Q. The school house is due east from you?
A. Yes, sir; something near east.
51st Q. That would be between these lines, would it not?
A. Yes, sir.
52nd Q. By what authorities is that school supported?
A. By the authorities of the state of West Virginia?
53rd Q. Do teachers employed by the Boards of Education of this state teach them?
A. West Virginia.
54th Q. What county?
A. Preston county.
55th Q. What district?
A. Portland district.
56th Q. You live in Portland district, do you?
A. Yes, sir.
57th Q. Have your lands been recently assessed under the new law?
2665 A. Yes, sir.
58th Q. Who assessed them?
A. I believe Major Orr was to have done it.
59th Q. Major U. N. Orr of this city—of this town?
A. Yes, sir, I believe so.
60th Q. He lives in Kingwood, doesn't he?
A. I think so.
61st Q. How near to the old Burchinal road is your house?
A. The closest place I would say is three hundred yards, or three hundred and fifty—somewhere along there.
62nd Q. How far is your house from the new line that was run through there?
A. About three rod, I think.
63rd Q. Are you north or south of the Burchinal road?
A. I am south.
64th Q. Who did you say owned the land lying right north of you.
A. John Metheny and Mr. N. J. Lee, both adjoin me on the north, just the opposite side of the Burchinal road Metheny lived, and this Burchinal road runs through Mr. Lee's place—cuts off a portion of it there.
65th Q. Where is the White Oak Spring and run with reference to your place?
A. Well, the head of it is right below our place. Our spring is really at the head of it. The school house was named after the spring there or the run, White Oak spring run.
66th Q. Where is that school house with reference to your house?
A. With reference to my house, it is east.
67th Q. How far east?
A. Not over a quarter of a mile.
2666 68th Q. Is there any other road in that neighborhood besides the old Burchinal road?
A. Cranesville road is there.
69th Q. Where is the Cranesville road? Where does it run?

A. The Cranesville road runs something near north and south. It lies east of where I live, in about the same distance of the school house. The school house lies between the Burchinal road and the Cranesville road. They fork there, come together like this (illustrating) and this school house lies right there in the corner—comes out to what is known as the White Oak Spring.

70th Q. Now, going north, which way does that Cranesville road run?

A. It runs something near north and south.

71st Q. Does it run on to Cranesville?

A. Yes, sir.

72nd Q. With reference to the new line and the old state line, where does this Cranesville road lie?

A. Between the two.

73rd Q. All the way from your place to Cranesville?

A. I do not know that the line crosses it. I would not say positively——

74th Q. Either line, the old one or this line that was run by Mr. Brown in 1897?

A. I could not say as to whether that one crosses it or not. I think not, but neither one of the other ones do between my place and Cranesville.

75th Q. The authorities of what state work that Cranesville road?

A. West Virginia.

And further this deponent saith not.

(Signature of witness waived by stipulation of counsel.)

2667 WILLIAM G. BROWN, a witness produced on behalf of the State of West Virginia, having been duly sworn, deposes as follows:

(Examined by Mr. PRICE:)

1st Q. Please give your name, your age, place of residence and occupation.

A. My name if William G. Brown; I am fifty years old; I have lived all my life in Kingwood, W. Va., and am an attorney at law by profession.

2nd Q. In what county is Kingwood situated?

A. In Preston county.

3rd Q. Is it the county seat?

A. The county seat of Preston county.

4th Q. Will you state whether you own any land along the line between Preston county, W. Va., and Garrett County, Maryland? First, do you own any land?

A. I do, jointly with E. D. Bowman and T. Pickenpaugh's heirs own a balance of seven hundred and some acres along that line. It is just a balance, as I understand it, or part of the balance of the Hoye survey of thirty-six hundred acres.

5th Q. How did you acquire title to that piece of land?

A. To the portion we now own, or a part of it, we acquired title at a tax sale.

6th Q. Did you get a deed for it? If so, please state whether said deed is recorded, and give the reference to it in the deed book.

7th. Q. We did, by deed executed on the 6th day of December, 1895, by J. Ami Martin, clerk of the county court of Preston county, and said deed is recorded in deed book No. 78, page 371, of the records of said Preston county.

8th Q. This deed purports to convey that portion of the thirty-six hundred acre survey of John Hoye, which lies between the old and new Maryland lines, and the quantity of land stated in this deed as conveyed thereby is twelve hundred and thirty acres. Is
2668 that correct or otherwise?

A. We have left and are now assessed with seven hundred and seventy-nine acres.

9th Q. Have you sold any part of that land to any one?

A. I am not sure whether we have sold any part of this land or not. We have owned several other portions of this survey, and have sold different parcels of this survey heretofore, but I am not sure whether we have sold any that was granted to us under this deed or not. I could not tell without looking it up.

10th Q. How did you acquire title to the other portions of that survey?

A. My recollection is that Mr. Gibson and I acquired title, to a part of it at a tax sale, and a part of it, I think, I purchased in the chancery cause of John P. Jones against John Hoye and others, is my recollection.

11th Q. How long have you owned the other portions of said survey?

A. The first portion of the survey that I owned, as near as I can now remember must have been back between 1885 and 1890, or along there, the first time that I began to handle any of this Hoye land.

12th Q. Have you made sales of portions of it?

A. I have, of one tract——

13th Q. Please give the names and quantity of each parcel sold to each person, so far as you can at present?

A. One tract was sold to a man by the name of Metheny, I think it was a small portion, probably sixteen acres, and another tract was sold to Chauncey Martin, and another tract was sold to John Hoye, and there may have been other tracts, and I think there were small tracts, but those are the ones I recall now.

14th Q. I will ask you to look at the map No. 1, prepared by Julius K. Monroe, surveyor in this cause, and point out on that map, if you can, the location of the strip of land described of twelve hun-
2669 dred and thirty acres between the old and the new Maryland lines.

Exception by counsel for the State of Maryland.

A. It is a part of the John Hoye survey of thirty-six hundred acres as indicated on the map, and if these two black lines in said survey indicate the old and the new Maryland lines referred to in the deed, the strip that I own jointly with Bowman and Pickenpaugh lies between these two black lines.

15th Q. Assuming that the line represented by the square dot and the words "Snaggy Mountain," to be the line run by Lieutenant Michler in 1859, where would your land lie with reference to that line, east or west of it—I mean the strip conveyed by the deed you have mentioned.

Exception by counsel for the State of Maryland on the ground that the land is not located on the plat.

A. It would lie east of the line indicated by the square dot, marked "Snaggy Mountain."

16th Q. You know nothing do you personally about the location of a line run by Julius K. Monroe in that neighborhood in 1894?

A. Only from what I have heard and read in the papers. I have no personal knowledge of the line.

17th Q. What has always been your understanding as to where the old line was with reference to the new Michler line, east or west?

Exception by counsel for the State of Maryland.

18th Q. Was the old line east or west of the Michler line?

A. The old line was east of the Michler line.

19th Q. You have spoken of having sold portions of the Hoye thirty-six hundred acres to several people. Where did that land lie with reference to the strip of land about which you have just been speaking, east or west of it?

2670 A. West of it.

20th Q. Do you still own any land west of the Michler line?

A. I have made Chauncey Martin a title bond for one hundred and some odd acres, which has not been paid for, but he holds a title bond for it.

21st Q. And will that take all the land you own west of the Michler line?

A. As I understand it, that takes all the balance of the land I own west of the Michler line.

22nd Q. Where is the land about which you have been speaking assessed for taxation, in what county and state?

A. They are assessed for taxation in Preston county in the state of West Virginia.

23rd Q. Does that apply to the strip conveyed by this tax deed lying between the old and the new lines?

A. Yes, sir, it does. The deed was made to us in 1895, and we have been paying taxes on it regularly from that time on, and my information is that taxes before that were collected from the Hoye estate. How far back I cannot tell, but it is one of the old titles, and I presume the taxes have been paid on it, since the time it was patented in Virginia and West Virginia.

Exception to the last part of the answer by counsel for the State of Maryland.

The WITNESS: I can add to that that I have knowledge that it was paid for several years before that, for I looked it up, but how far, I have not gone back to see.

24th Q. You bought it for delinquent taxes which were assessed against John Hoye, did you not?

A. David Hoye, isn't it, or is it John? (Examined deed.) Yes, it is David Hoye. We did.

25th Q. Has there been any attempt on the part of the
2671 authorities of the State of Maryland to collect taxes from you on that land?

A. None whatever.

26th Q. Do you know of any other claimant of this land paying taxes on it to the State of Maryland?

A. I do not. We have had no interruption in our title, and have had no notice of any other claimant.

27th Q. Is there or not any one living on any of those lands belonging to you, or that did belong to you?

A. There are on the other tracts, but in this tract in there, it is woodland, and in the portion of land we now own, it is woodland, and there are no improvements on it.

28th Q. That is the strip of land between the old and the new lines?

A. Yes, sir.

29th Q. And the other lands—are there persons living on them?

A. Yes, sir; there are numerous farms and farm houses on the other parts of the thirty-six hundred acres, and of the parts we sold, Mr. Metheny lives as I understand it, on his piece, Mr. Hoye's grantee lives upon the hundred acres that was sold to John Hoye, and a man by the name of Wilhelm, as I am informed, lives upon the Chauncey Martin tract.

30th Q. Do you know whether those people consider themselves citizens of West Virginia or Maryland?

A. They are citizens of West Virginia, and taxes have been paid upon their lands by me to the State of West Virginia, and I know they vote and claim the citizenship in the State of West Virginia.

31st Q. I will ask you to file with your deposition a certified copy of this deed to which you have referred from J. Ami Martin, Clark,
to Bowman, Brown and Pickenpaugh, dated December 6th,
2672 1895, and mark it "W. G. Brown, Exhibit A," if you please.

A. I will do that.

And further this deponent saith not.

(Signature of witness waived by stipulation of counsel.)

No other witnesses appearing, the further taking of these depositions is continued until tomorrow at the same place, and between the same hours.

2673 FRIDAY, *July 20th*, 1906.

MARCELLUS ALBRIGHT, a witness produced on behalf of the State of West Virginia, having been duly sworn, deposes as follows:

(Examination by Mr. PRICE:)

1st Q. Please give your name, your age, your place or residence and your occupation.

A. Marcellus Albright; sixty-three past; Terra Alta.

2nd Q. Your occupation?

A. Well, since the holidays, I have not been in any particular occupation, only attending my truck patches and painting my house in the summer. I worked for the furniture store there at Terra Alta for about three years, but am out of that now.

3rd Q. How long have you lived in Terra Alta?

A. It will be four years this fall, I think—four years in July since I bought the property I am living on.

4th Q. Terra Alta is in Preston county, West Virginia, is it not?

A. Yes, sir.

5th Q. On the Baltimore & Ohio Railroad?

A. Yes, sir.

6th Q. Where did you live before you went to Terra Alta?

A. I lived on a farm near Cranesville.

7th Q. How long had you lived there?

A. I moved there I think in 1885.

8th Q. And where had you lived before you moved there?

A. Well, I was a year in Cranesville at a saw mill, and two years at my father's attending the grist mill after I came from the west.

9th Q. Where was your father's?

A. He lived there at the Albright mill in two miles of Cranesville.

2674 10th Q. Where were you born?

A. I was born across the hill from where my father lives now. George A. Kelly lives there now.

11th Q. Is that in this same neighborhood where your farm was?

A. Yes, sir; it is you might say in the same neighborhood.

12th Q. You were born in what year?

A. 1843, Washington's birthday.

13th Q. And where did you live from your birthday until the war?

A. I lived where my father lives now, at the old Henry Albright mill, after we moved from where Kelly lives.

14th Q. And were you in the army?

A. Yes, sir, I enlisted July 4th, 1861.

15th Q. After the war, where did you live?

A. I lived, I think, a little over a year at home, and then I went west.

16th Q. Now, Mr. Albright, where did you live in 1897?

A. I lived on the farm that this line run through.

17th Q. Do you refer to the line that was run by Mr. Brown, the surveyor, accompanied by Mr. Monroe, in 1897?

A. Yes, sir.

18th Q. Did that go through your farm?

A. Yes, sir.

19th Q. Had you ever known of any claim of any Maryland line run along there before?

A. No, sir; I never heard of such a thing.

20th Q. Where had you understood the state line to be before?

Objection by counsel for the State of Maryland.

A. Why, the line I am speaking of, the one that was cut through, was still east of it.

2675 21st Q. You speak of a line having been cut through—when was that?

A. I think it was in 1858 or 1859.

22nd Q. How was it cut through?

A. They chopped all the timber down—sixty feet wide.

23rd Q. You know where that line ran along?

A. Yes, sir.

24th Q. Where is that line with reference to your place?

A. Well, I could not exactly tell the distance, but it is in the neighborhood of a mile, I suppose.

25th Q. Which direction?

A. East.

26th Q. That line cut through there in 1859 is in the neighborhood of a mile east of your place?

A. East of my place.

27th Q. Had you ever heard of any other state line?

A. There is one still east of that, the old line of all, or claimed to be the old line.

28th Q. And how far east of the——

A. Well, I could not exactly tell. It was between sixty and eighty rods, I suppose.

29th Q. This line that was cut through, was it known as the Michler line?

A. I think that was the name it went under.

30th Q. How much land did you own in there?

A. It was called one hundred and twenty acres.

31st Q. Do you still own it?

A. No, sir.

32nd Q. What did you do with it?

A. I sold it.

33rd Q. When?

A. I sold it in—I could not just tell the date, now. It was just before I came out here. I sold it to James Wolf.

2676 34th Q. Well, about how many years ago?

A. Well, it is about four years ago. Perhaps it will be five in February. I think it was four years ago last February, if I am not mistaken.

35th Q. How much land was there you sold?

A. I sold one hundred acres to him, and I had sold off a strip before that to my brother and Jacob C. Wolf, a little corner—run out to the point.

36th Q. Where did you get that land?

A. From my father.

37th Q. Where did he get it from?

A. He got it from John Crane, my grandfather.

38th Q. Your mother was a daughter of John Crane, was she?

A. Yes, sir.

39th Q. Do you remember your grandfather?

A. Yes, sir.

40th Q. Where did he live?

A. He lived on this big farm that we were speaking of, that we had the line through.

41st Q. This new line—that is, the line out in 1859, ran through John Crane's farm?

42*nd* Q. Yes, sir; both lines ran through his farm, the two old lines.

43rd Q. Was his residence east or west of the Michler line?

A. That was west.

44th Q. About how far?

A. Well, it was forty or fifty rods, I suppose, or may be more.

45th Q. What quantity of land did he own in there?

A. Oh, I could not tell you. He owned a big scope of it at that time.

46th Q. Could you give an estimate?

2677 A. No, I could not. I do not remember what his farm contained, and then he owned four or five thousand acres in the mountain there, and he owned the farm that Sol Feather now owns, and he owned the farm that Doe Hartman owned when Doe owned it, the one that Hen. Spindler and Ringer own now, and he owned my farm that I had, and I don't know how many more there, a big scope of land that he had the whole business of about.

47th Q. How long did John Crane live there and own this land?

A. Well, he moved there before my time, and I think he died in 1858 or 1859. I ain't positive which.

48th Q. Well, he lived there from your earliest recollection?

A. Yes, sir. He lived there from my earliest recollection.

49th Q. Did he hold his land under a Virginia or Maryland title?

Objected to by counsel for the State of Maryland.

A. As far as I know, it was a Virginia title.

50th Q. Did he claim to be a citizen of Virginia or Maryland?

A. Yes, sir.

51st Q. Of what?

A. Of West Virginia.

52nd Q. And before the war, before West Virginia was created, of what state?

A. Why, it was old Virginia.

53rd Q. Did he vote in Maryland or Virginia?

A. Voted in Virginia, I suppose. I do not remember about that, but he always claimed his residence in Virginia.

5th Q. And where have you claimed your residence always?

2678 A. Well, since the new State, in W. Virginia.

55th Q. Before?

A. Why, it was in the old state?

56th Q. Of Virginia?

A. I have voted at the—that was my first vote, for the new state.

57th Q. The first vote you voted was for the creation of the State of West Virginia?

A. Yes, sir.

58th Q. Where did you vote then?

A. At Brandonville.

59th Q. Brandonville, what county?

A. Preston county.

60th Q. And the votes you have cast since then have been in West Virginia, have they?

A. Yes, sir; well, I left here——

61st Q. Did you vote for officers of West Virginia and of Preston county?

A. Yes, sir.

62nd Q. Where did you pay your taxes?

A. Paid it in Preston county.

63rd Q. Can you give the names of the people—your neighbors up there adjoining your farm that you owned who lived between the old state line, and the line that was run by Mr. Brown in 1897? Give me the names of the people you can remember living in between those lines?

A. Well, we will start there at the foot of the mountain. There was David Wolf, James Wolf, Andy Collins, Jacob Wolf. That takes it to the Cranesville road, and then there is Falkenstein and Notley Browning and then come Mike Feathers and Wes., Dave, Joseph Feathers, David Shafer, Abe Hays, Preston Ringer, Israel Miller, Emanuel Matheny, George Matheny, and then William D. Titchnell, David Friend, and I think the Taylors. I ain't
2679 positive about the Taylors, whether this new line ran through them or not. That is about as far as I could go. Well, there is some Groveses, but I could not name them that own between the lines. That took it to about White Oak Spring.

64th Q. Where do those people that you have mentioned claim their residence—in which state?

A. West Virginia, all except this Falkenstein that I named. He rather claimed his in Maryland.

65th Q. And where do they all vote?

A. Voted in Preston, all excepting Falkenstein.

66th Q. Have you seen them at the polls?

A. Yes, sir.

67th Q. At elections held under authority of the State of West Virginia?

A. Yes, sir.

68th Q. Have you ever known any jurisdiction to be exercised by the State of Maryland over any of that territory?

A. No, not over that.

69th Q. The lands in there are assessed where?

A. Well, I think the most of them—in fact I might say all excepting Falkenstein are assessed in West Virginia, and I ain't positive about his, but he always claimed his residence in Maryland.

70th Q. You do not know about his lands, where they are assessed, do you?

A. No, I do not. I expect part of them probably was assessed in West Virginia.

71st Q. Now, are there any public roads running east and west in that neighborhood?

A. Yes, sir there is a road that runs—what they call the Pike hill road runs down past Browning's and Falkenstein's, and then there is a road that runs through Cranesville, that runs toward
2680 Sang run, and then there is one that runs down in the swamp.

The WITNESS: There is one road that runs to the swamp.

I believe those are the only ones that run east and west, or anything near that direction.

72nd Q. Have you had anything to do with the working of the roads?

A. Not that far out, I did not. My working was the other way, west of it.

73rd Q. Did you work the roads east of you at all?

A. No, not that far, not to the line. I never worked them to the line.

74th Q. Do you know what state authorities did work to the line?

A. West Virginia.

75th Q. Which line?

A. Well, I think the most of the time to the old line, it might have been some times they did not go to the old line, only to the new. I would not be positive about that, that is, to the second line, I think. I think some places they worked it to the old line, and some places they stopped at the second line if I am not mistaken.

76th Q. You had nothing to do with that?

A. I had nothing to do with that working up in that district?

77th Q. You spoke about John Crane's residence lying west of the Michler line. Are you correct about that?

A. How is that?

78th Q. You spoke about old Mr. John Crane's residence being west of the Michler line? Is that correct?

2681 A. I think it is. Now, let's see——

79th Q. Where was that house with reference to where Mike Feathers now lives?

A. Right the same place.

80th Q. John Crane's residence was right where Feathers lives?

A. He built part of it on the old foundation.

81st Q. That was where Feathers lived in 1895 and 1896, and along there?

A. I do not remember whether he was living there then. His son is. I forgot when he died, but his son owned it.

82nd Q. Did he live there up to the time of his death?

A. Yes, sir.

83rd Q. He lived at the same place where old John Crane lived?

A. Yes, sir; but I would not be positive now, but it runs in my mind that he was west of the line that was cut through.

84th Q. You are not positive about that, are you?

A. I would not be positive about it; no.

Cross-examination by Mr. SINCELL:

85th Q. Do you know where the Michler line runs through that neighborhood?
A. I used to know.
86th Q. What do you call the old line?
A. The old line?
87th Q. Yes.
A. That was the line that was run before.
88th Q. Who ran that line?
A. I could not tell you that.
89th Q. Did you ever see anybody run it?
A. No, sir. I did not see them running, but I seen where
2682 it was cut out. That is the one they cut out sixty feet.
Q. That was the line that was run in 1859?
A. Yes, sir.
Q. The Michler line?

(No answer.)

And further this deponent saith not.

(Signature of witness waived by stipulation of counsel.)

2683 1 O'CLOCK P. M., *July 20th*, 1906.

C. H. LOAR, a witness produced on behalf of the State of West Virginia, having been duly sworn, deposes as follows:

(Examined by Mr. PRICE:)

1st Q. Please state your name, your age, your place of residence and your occupation.
A. C. H. Loar; forty-six years of age; Oakland, Maryland; occupation—I have been in the general merchandise business but just now am out of it.
2nd Q. Do you own any land in Preston County, West Virginia?
A. My mother owns a tract of land on the Backbone mountain.
3rd Q. How long has your mother owned that tract of land?
A. To the best of my knowledge it was purchased in the year 1881, so I am sure it is over twenty years.
4th Q. From whom was the land bought?
A. From Reuben Morris.
5th Q. Was it purchased by your mother?
A. By my father.
6th Q. What was his name?
A. D. H. Loar.
7th Q. Is he living or dead?
A. No, sir; he is dead.
8th Q. Did he leave a will?
A. Yes, sir.
9th Q. And devised it to your mother?
A. To my mother; yes, sir.
10th Q. In fee?
A. In fee, yes, sir.

11th Q. And she is still living?
A. She is still living.
12th Q. What is her name?
A. Mary C. Loar.
13th Q. Where does she reside?
A. Oakland, Maryland.
14th Q. Do you know what original patent this land was embraced in?
2684 A. Well, from Governor Johnson, of Virginia.
15th Q. To whom was it granted?
A. To my understanding, Wilson, Morris & Byrne—to the best of my recollection.
16th Q. Do you know what quantity of acres the original patent called for?
A. It called for six hundred acres.
17th Q. Have you had that land surveyed since you have owned it?
A. Yes, sir; it has been surveyed twice.
18th Q. Who surveyed it?
A. Mr. Morris himself in the beginning, and Mr. Monroe.
19th Q. What Monroe?
A. Mr. Julius K. Monroe, five—six years ago.
20th Q. Are you acquainted with any of the lines of that survey?
A. Yes, sir; I have been over all the lines save the boundary line between the two states. We went from the state boundary line around the other lines, and connected up at the other end. We did not follow the state line.
21st Q. You started at a point on the state line?
A. Yes, sir, and followed the boundaries, save the state line.
22nd Q. Followed around the boundaries to another point on the state line, but did not run the connecting line along the line?
A. That is right.
23rd Q. Did you know where the Michler line is that was run in 1859? Do you know where it is?
A. I was shown the line by a man by the name of Mosser.
24th Q. George Mosser?
A. Yes, sir.
25th Q. Did he live in that country?
A. Right adjoining this line.
2685 26th Q. When did he show you the line?
A. When we made the survey and previous to that.
27th Q. Did you see any of the monuments on the Michler line?
A. No, I cannot say that I saw any monument, but he took me to the line, and showed me where the line ran through, but I do not remember any particular markings.
28th Q. Was there anything on the ground to indicate a line?
A. Not that I remember. To the best of my recollection—no, I won't say that. I simply remember him showing me the line; that is, the way it ran, you know, and the location of it.
29th Q. Was that the line that you began your surveying on and ran around to?

A. To the best of my recollection, it was the old line. To the best of my recollection, he showed me the old line and where the Michler line ran, and our point was on the old line.

30th Q. Was the Michler line east or west of the old line?

A. I am a little mixed in my recollection about that, but I think the old line was east of the Michler line. I am not certain about that.

31st Q. That is the best of your recollection?

A. Yes, sir; the best of my recollection. It has been some time ago, and I did not place it particularly on my mind, you know, and have forgotten.

32nd Q. Now, since you have owned that land, in what state and county has it been assessed for taxes?

A. Preston county, West Virginia.

33rd Q. And have the taxes been paid?

A. Yes, sir; the taxes have been paid up to this year.

34th Q. What is the character of the land? Is it settled up or cleared?

A. No, sir; it is in the wilds. It is absolutely a wilder-
2686 ness.

35th Q. Have you any tenants on it at all?

A. No, sir; no tenants.

36th Q. Is there any conflicting title with it, so far as the Maryland people are concerned?

A. No, sir; not to the best of my recollection, or knowledge.

37th Q. You have had no conflicting claim of title by any one holding under a Maryland grant along there?

A. Not to the best of my knowledge; no, sir. Mr. Rumbarger when he first began lumbering in that country went in and cut some walnut trees off, and Mr. Mosser notified him that he was over the line, and after that he quit.

38th Q. Do you remember who showed the surveyor who ran out your line the corner on the Maryland line?

A. That was Mr. George Mosser, and I believe a man by the name of Ely Mosser was there also, conversant with the lines. Mr. Young Morris was there also.

39th Q. Son of Reuben Morris?

A. Yes, sir, son of Reuben Morris.

40th Q. Who was Reuben Morris?

A. All I know is, he was a Kingwood man, and we first heard of him as owning this tract of land. We at that time were in the shook business, intended to make shook off of it, and father wrote, and he was *he was* willing to seel the land, and the bargain was made, but I do not remember ever having seen him myself.

Cross-examination by Mr. SINCELL:

41st Q. What personal knowledge have you of the fact that Rumbarger cut timber off of this tract of land?

A. Well, Mr. George Mosser told me that he cut it off.

42nd Q. Then you are simply testifying from what Mr. Mosser told you?

2687 A. No, sir. He showed me where the timber had been cut. I saw the stumpage.

43rd Q. Do you know that that is the timber Rumbarger cut?

A. Only as Mr. Mosser told me.

44th Q. Then you base your testimony as to this matter upon the statements of Mr. Mosser?

A. No, sir, not exactly. We have a letter also from Mr. Rumbarger stating that he cut timber on his own land, but it was his men that was sent up there and that cut the timber.

45th Q. Do you know under what title Mr. Rumbarger claimed this timber?

A. No, I do not.

46th Q. Did you get any money for that timber from Mr. Rumbarger?

A. No, sir, I got no money.

47th Q. Never did?

A. No, sir.

48th Q. Did you ever attempt to collect anything for it?

A. At the time this was done, and at the time we could have brought suit, Mr. Rumbarger failed in business. Otherwise we would have brought suit.

49th Q. In point of fact you brought no suit.

A. Because there was no use to bring suit from the fact thst Mr. Rumbarger failed. It was our intention to bring suit.

50th Q. You said that you had never been along the Maryland line where your tract adjoins it, did you not?

A. No, sir; never been over the land.

51st Q. Never been on it.

A. I have been on the line, but never from end to end.

52nd Q. Mr. George Mosser pointed out where the line ran there?

2688 A. Yes, sir.

53rd Q. Which line was that?

A. That was the old line, and he also pointed out the Michler line. We could see the old line, but the new line I cannot say I am so sure of.

54th Q. Were you present on the survey in this case?

A. Yes, sir.

55th Q. In this boundary line case between Maryland and West Virginia?

A. No, sir. I thought you were speaking in reference to our own survey.

56th Q. Then you pointed out no object on the ground of your tract to the surveyor for West Virginia in this case?

A. No, sir.

57th Q. You do not know whether your land is correctly located upon the plats in this case or not, do you?

A. Of course, we have only our surveyor's knowledge and skill and integrity in regard to it, and we have got as much assurance that we are on the line as we can have.

58th Q. You did not understand my question. Do you know whether your land is correctly located on the plats in this case?

A. I do not know anything about the plat.

59th Q. You do not know, as a matter of fact, whether your land is located on the plats in this case?

A. I saw the Morris and Burns tract marked on the map, on this plat.

60th Q. Can you say from looking at that map that that is the same land you own or your mother owns?

A. I could; yes, sir.

2689 61st Q. How do you do that?

A. By its location and its shape.

62nd Q. You simply know that your lands are located by looking at that map?

A. So far as being platted in this suit is concerned, that is all I know, yes, sir. Of course, I have no other knowledge, no other means of gaining knowledge.

Redirect ex. by Mr. PRICE:

63rd Q. It was Mr. Julius K. Monroe that ran your lands out for you, wasn't it?

A. Yes, sir.

64th Q. It is the same Julius K. Monroe who is now here present, and who has been surveyor in this case, isn't it?

A. Yes, sir.

65th Q. And you were with him at the point on the old line where he started, and where he came around to below—or above?

A. Yes, sir.

2690 WESLEY DE BERRY, a witness produced on behalf of the State of West Virginia, having been duly sworn, deposes as follows:

(Examined by Mr. PRICE:)

1st Q. Please state your name, your age, your place of residence and your occupation?

A. Wesley De Berry; forty-six years old the 30th day of November, 1906—I will be forty-six; I live at Terra Alta, Preston County, West Virginia; merchant there now, at the present. I am merchandizing and farming, you might say.

2nd Q. Where were you born?

A. Born in Preston County, West Virginia, near the town of Corinth now, one mile from Corinth.

3rd Q. And where have you lived all your life?

A. Well, that has been my home, considered that my home all my life, stayed some in Tera Alta, but it has been in West Virginia, and Preston County—has been my home.

4th Q. Is Corinth on the Baltimore and Ohio railroad?

A. Yes, sir.

5th Q. What direction and what distance from Huttons?

A. Well, it is west about—about west from Huttons, and about

something like there quarters of a mile, I suppose, between the two points.

6th Q. What is the population of Corinth?

A. Well, it is a mining town, and there is said to be something like three hundred working men there. It varies considerably, I suppose, a kind of a floating element there, that is, a good many miners coming and going, and it is pretty hard to tell just what the population of the place is.

7th Q. You were examined as a witness, I believe, once
2691 before in this case, were you not?

A. I think so; yes, sir.

8th Q. Do you own any land in that neighborhood?

A. Yes, sir.

9th Q. Where is the land that you own?

A. Well, the land that I now own is one piece of it about something near a mile from the town of Corinth in a south westerly direction from Corinth, and another piece of land that I own there is—Well, it lays south of Corinth and Huttons, that is, taking something near the center of the two places, I would judge it was about south of the center between those two points.

10th Q. Do you know where the Michler line runs through there?

A. Yes, sir.

11th Q. Is there a monument anywhere along there?

A. There was a stone up at the railroad there, where the Michler line was said to cross, I believe.

12th Q. Do you know any other Maryland line in there except that Michler line?

A. Yes, sir; I know where there is two others said to be lines.

13th Q. Where are they?

A. One is east of the Michler line, and the other is west of it.

14th Q. Where is the one that is east, how far east of the Michler line?

A. Well, I judge it is something like between—something like sixty rods, I believe, there.

15th Q. When did you ever hear of a line west of the Michler line, a Maryland line?

A. A few years ago there was a party of surveyors came through, and were running a line west of the Michler line.

2692 16th Q. Is that the line that was run by Mr. McCulloh Brown in this cause in 1897?

A. Yes, sir, I think so.

17th Q. Had you ever heard of any Maryland line over there before?

A. No, sir.

18th Q. Then the only reason you have spoken of the line is because of the survey that was made there?

A. Yes, sir; that is the only reason I have to think there was any line there.

19th Q. How far is that line from the Michler line?

A. Well, I could not tell. I never measured the distance from one

line to the other, but I would suppose there was something over a mile difference between the two lines.

20th Q. Have you any land that touches this land that was run by Mr. Brown?

A. Yes, sir; he ran through the land that I now own.

21st Q. Where did you get that land?

A. I got it from my father.

22nd Q. How much is there of it?

A. In that piece there is one hundred and ninety eight acres—in that piece, I believe, something like that—one hundred and eighty six may be. I do not know the exact amount.

23rd Q. Who was your father?

A. Samuel De Berry.

24th Q. And when and where did he get it?

A. He bought it from David Freeland. I do not know that I could tell the exact date of the purchase from Freeland, but it was in 1850 some, I think. It was before 1860, I know.

25th Q. And then your father owned from that time until
2693 you got it?

A. Yes, sir.

26th Q. And you have owned it since?

A. Yes, sir.

27th Q. Where has that land been assessed for taxes, during all that period?

A. In West Virginia, Preston County.

28th Q. Now, will you name the people that live between the old Maryland line, as recognized along there by you and this new line that was run by Mr. W. McCulloh Brown in 1897, as far as you can in that neighborhood?

A. Do you mean the people that live there at the present time, or at what time?

29th Q. Well, if you can, you might say in 1897, when the line was run, and then if there are any since you can give them, too.

A. Well, there was Samuel De Berry, Daniel Frankhauser, K. B. Frankhauser, Garrett T. White, Irvin Jennings. Now, let's see—I don't believe Jennings lived in there at that time. William Saucer, and there was a Freeland, George Freeland, I believe, and Warren Felton. I believe his initials are E. W. Felton, Mr. Shafer, do you remember who lived in that little house down away from the railroad?

30th Q. It is not very particular. I want you to enumerate them as near as you can.

A. S. B. Crane. I am not sure which side of the line his house was on, but it ran through his land. This line that was run in 1897 I think ran through his land, but I am not sure which side of his house the line is on. Then there was other parties that lived on a piece of land I owned in there, too, by the name of Fraleys. I owned another piece of land in there at that time.

2694 31st Q. That is as far as you can now recollect them?

A. Yes, sir.

32nd Q. Have there been any come in since?

A. Yes, sir; there have been some parties moved in since that. There was Daniel Shafer, too, in that first, who has been there a good while. I forgot him.

33rd Q. Do you know where those people living in between the old line and the new line as run by Mr. Brown have always voted in your recollection?

A. Well, sir, I think they voted at Corinth, in Preston county, West Virginia.

34th Q. Did they vote for officers of the State of West Virginia and Preston County, and district officers?

A. I suppose they voted for them. The- cast their ballots.

35th Q. The elections were held under the authority of what state?

A. The State of West Virginia, county of Preston. There was an election precinct at Corinth.

36th Q. What do you know about the assessment of lands in there, and the payment of taxes on the lands, whether they are in Maryland or West Virginia?

A. They are assessed and taxes paid in West Virginia, along there.

37th Q. Have you ever know- the State of Maryland to exercise any jurisdiction in that territory?

A. No, sir.

38th Q. Do you know a tract of land called the Fredlock tract?

A. Yes, sir.

39th Q. Where is it located?

A. Well, it is located southwest of Huttons, in Maryland.

2695 40th Q. With reference to the Maryland line?

A. With reference to the Maryland line—well, it runs in west of the Michler line, and between the Michler line and the old line, the old original first line that we knew of.

41st Q. Do you mean that the Michler line runs through it?

A. Yes, sir.

42nd Q. Some on each side of the Michler line?

A. Yes, sir; some on each side of the Michler line?

43rd Q. Then does it extend over to the old line?

A. Yes, sir; it does.

44th Q. What is there on the old line to show there is a line—you recognize as the line?

A. There is some marks on trees there, of the old line. I think there were old marks, and then there is later marks along there. There has been a survey made there in the last few years, and the old line retraced, and I think some newer marks, you know. I think this Preston Lumber Company's men ran through there, and trimmed out the old line, and I think possibly made a few new marks on the line.

45th Q. Who owns that Fredlock tract?

A. I own part of it myself.

46th Q. How long have you owned it?

A. Something about twenty-five years, I reckon—close to that.

47th Q. Who did you get it from?

A. I got it from Henry Fredlock.

48th Q. In which state is that tract of land assessed?

A. In West Virginia.

49th Q. All of it?

A. Yes, sir.

50th Q. You pay no taxes on any part of it in Maryland?

A. No, sir.

2696 51st Q. About how far east is the eastern line of that Fredlock tract from the Michler line?

A. Well, I do not know just exactly. I suppose it is fifty or sixty rods, may be, something like that.

52nd Q. Is it cleared land along the old Maryland line?

A. Well, there is some of it cleared. There is a field that has been cleared and growed up. The old fence is still there, and there is some of the land that is cleared, and been cleared.

53rd Q. Who owns the land on the other side, the Maryland side, opposite?

A. Why, Connell did own the land on the east side of the old line. I think he sold may be to the Preston Lumber Company. I am not sure, but I think he did.

54th Q. Now, I will ask you as to what state supports and carries on the public schools between the old line and the line run by Mr. Brown?

A. Why, West Virginia has been having schools. They have a school house double—we have two schools in one building.

55th Q. Is Corinth east or west of Mr. Brown's line?

A. It is east of Mr. Brown's line.

56th Q. It is between the lines then?

A. Yes, sir.

57th Q. That is, between the Michler and Brown lines?

A. Between the Michler and Brown lines?

58th Q. Do you know what the original tracts were there, in which your land was embraced, the patents?

A. Of which piece of land?

59th Q. Well, any of them?

A. I am not sure whether the home farm there—I do not think it belonged to the Deakins survey. I kind of think that that was patented under Hooker, or that Hooker had that patent. I

2697 am not sure. I do not know positively under what patent they were. Father bought from Freeland. I know that that has been over—well, it must have been fifty years anyhow, I think, together, but I do not know who had taken the land up, or possibly I cannot just think now.

Cross-examination by Mr. SINCELL:

60th Q. You have stated that John A. Connell owned the land east of the Fredlock tract?

A. Yes, sir.

61st Q. Wasn't that a part of what was known in that section as the Schoolfield tract?

A. No, sir.

62nd Q. It was not?

A. No, sir.

63rd Q. What tract is it? Do you know?

A. The Schoolfield land, I think, was south of that tract of land.

64th Q. What tract was this that Connell owned east of the Fredlock tract?

A. I do not know. In that section of country, they have their tracts of land named "Kindness," or something like that, and I do not remember what name that land had.

65th Q. Were you present on the survey in this cause when Mr. Monroe ran a line for West Virginia in 1894?

A. I do not remember whether I was—I helped them survey two or three days, but I do not think Mr. Monroe was the compass man. I think Mr. Brown was running the compass when we ran. I am not positive any more. It was in the winter time—I know that—and a very snowey time when we were doing the work.

66th Q. I am referring to the survey in 1894, when Mr. Monroe made the survey in this case. Were you present when he
2698 made the survey?

A. No, sir.

67th Q. You do not know where he located the land, the line at that time?

A. No, sir.

68th Q. Did you ever see any one running any of those lines except the line that Mr. Brown ran for either of the states?

A. Yes, sir. I think I have seen parties surveying on them. I have run the lines myself, I think twice, that is, a part of them.

69th Q. Did you ever see any one run any of those lines except the line Mr. Brown ran under the authority of the state or for the state?

A. No, I do not know that I did.

70th Q. Or either of the states of West Virginia or Maryland?

A. No, sir; I do not think I ever did.

(By Mr. PRICE:)

71st Q. Are you a surveyor?

A. Yes, sir, I work at it some, but — a great deal, but part of the time.

And further this deponent saith not.

(Signature of witness waived by stipulation of counsel.)

2699 A. J. ELLIOTT, a witness produced on behalf of the State of West Virginia, having been duly sworn, deposes as follows:

(Examined by Mr. PRICE:)

1st Q. Please state your name, age, residence and occupation.

A. A. J. Elliott; forty-nine; Terra Alta; miller, and have been civil engineer until the last six years all my life, but I am not now.

2nd Q. You say you have been a civil engineer until the last six years?

A. Until within the last five or six years; it was about five years ago, I think, or may be not that long, that I sold my instruments, but about six years ago, I started in the milling business, and have not done much since, only a little.

3rd Q. Where have you lived before you came to Terra Alta?

A. Before I came to Terra Alta, at Reedsville, Preston county, seven miles above Kingwood on the Morgantown Pike?

4th Q. How long have you lived in Terra Alta?

A. Nearly twenty-six years.

5th Q. What experience have you had in land surveying?

A. Well, since I was seventeen years old, I have been surveying land more or less every year, up to within five or six years ago.

6th Q. Have you surveyed any lands belonging to the Crane estate, the Cranes, along in the neighborhood of the Maryland line?

A. Yes, sir, the William B. Crane estate, I think I have surveyed the entire tract. Of course, it is cut up into small tracts, now, a great deal of it, in fact, all of it, and I think I have not only surveyed the outline of the original tract, but I think I did
2700 either the cutting up or resurveyed it. Some had been surveyed before I went over there. I think Col. Monroe surveyed some of the small pieces off possibly. I do not know of any one else.

7th Q. Where is that land located?

A. The Samuel B. Crane estate?

8th Q. Yes, speaking generally?

A. Generally speaking, from the Baltimore & Ohio railroad, taking that as a known point, about two miles north of that on the Maryland line. Well, from the Maryland line on the railroad, it is more than two or three miles, four miles perhaps, but the nearest point on the B. & O. railroad, down Snowey creek is about two miles, perhaps. That would be the south side of the William B. Crane estate as I know it, and then it extends along the Maryland line to the Burchinal road, the old state road that went through that country, and from the Maryland line it extends westward—well, four or five miles, five miles I should say—in that neighborhood?

9th Q. What quantity of land was embraced in it originally?

A. Well, it would only be conjecture, because I do not remember the number of acres at all, but I would say three or four thousand acres all told, might be more than that—might not be quite that much.

10th Q. When did you make a survey of those lands?

A. Well, now, I have been surveying each year some of those lands, from 1881 up to 1901 or 1902. I never made a survey of the entire tract at one time.

11th Q. During that time, was it owned by Crane?

A. By William B. Crane's heirs. I think he died in 1870 something, probably 1876 or 1878—some place along there.

12th Q. Do you know where William B. Crane got the
2701 title to those lands?

A. Yes, sir, I think I do. From Jacob Crane.

13th Q. His father?

A. His father.

14th Q. By will or deed or inheritance?

A. I guess I will have to say inheritance. There was a will, but I think the will—I have this from both his sons, William and Samuel—the will disappeared, and the entire land, there and elsewhere—that wasn't all the land he was possessed of at all—I think they were simply divided between the two boys, and the will probably was burned up when the court house was burned, I think it was, or may be some other time—I think it was burned up when the court house was burned. I think that is right. That is a matter of memory. Aunt Rachael Crane told me of it—William B.'s wife.

15th Q. What lands lie on the south of those Crane lands?

A. South of the Crane lands?

16th Q. Yes, sir, in the neighborhood of the Maryland line—along there?

A. May I ask a question? Do you want to know the people that live there to-day?

17th Q. No, I want to know what lands they are.

A. What lands they are as I know them?

18th Q. Yes.

A. Well, on the south are the Ward lands, afterward owned by Major Orr here.

19th Q. U. N. Orr?

A. U. N. Orr.

20th Q. Is that a large body of land?

A. Yes, sir, a large body of land.

21st Q. Do you know what patent that belongs to?

A. The Ward—I think that was the Deakins patent.

2702 22nd Q. How many acres in that Deakins patent?

A. Six thousand, I believe.

23rd Q. Now, what lands lie north of these Crane lands in the neighborhood of the line?

A. North of the Burchinal road, well, there is some—I don't know as you would call it the Burchinal road all the*y* way. Now, north of the Burchinal road, or north of the Crane land—I do not know the old titles. I would have to give you titles that I knew twenty-five years ago, known as the Fre*i*nds and the Lewises, the Taylors and Dodges.

24th Q. Was the Burchinal road the northern boundary of these Crane lands along there?

A. I think most of the way, perhaps all the way. My recollection is it is not all the way, but quite a good deal of the way.

25th Q. But it did borde*n* on the Burchinal road for a considerable distance?

A. Oh, yes, for quite a distance.

26th Q. I show you a deed from John Hoye to Jacob Crane, dated apparently the 10th day of August, 1846, for 1247 acres of land, recorded in book 7, page 228, and will ask you whether you

recognize the lands described in that deed as any part of the William B. Crane estate of which you have spoken?

A. Yes, sir; I am familiar with that deed. Mr. Monroe got that deed of me, and I got it of the Crane heirs while I was surveying part of their lands, and we used that deed in connection with other deeds, and how that came to be left with me, I do not know. I have no use for it especially, or at all, but I happened to have it.

27th Q. Mr. Monroe got that deed from you?

A. Yes, sir.

2703 28th Q. And you used it in locating the lands?

A. Yes, sir.

29th Q. I will ask you to file a copy of that deed with your evidence, and mark it "Elliott Exhibit No. 1."

A. I will do so, sir.

30th Q. What part of the Crane lands does that deed cover with reference to the Maryland line—the old Maryland line?

A. If I remember right—I might have to read that deed to determine that. I haven't thought of it for a long time, but if I remember right, it is the northern part. (Witness examines deed). I was right. It was the northern part along the Burchinal road, and along up there. I thought that was right.

31st Q. And what about the Maryland line?

A. Yes, sir, to the Maryland line, I think. I did not look at that, but that is my recollection of it. I will look at that to be sure of it. I know it must be. (The witness examines deed). Yes, sir; that is right.

32nd Q. I will ask you to look at the map No. 1, prepared by Mr. Monroe in this case, and state what is your opinion as to whether that 1247 acres marked on the map "John Hoye to Jacob Crane, 1247" is correctly located on that map with reference to the adjacent properties, and the Maryland line?

Exception by counsel for the State of Maryland.

A. As I understand, this is the old Maryland line, and this is the Michler line, and this is the Brown line. Here is the Burchinal road running out here. As to the John Hoye land, I never surveyed these lines as that tract, but I used it in connection with those lines.

33rd Q. What line along the Burchinal road and the

2704 Maryland line,—does it appear to be correctly represented on this map?

Exception by counsel for the State of Maryland.

A. So far as I can see, sir.

34th Q. In locating the Crane lands along in that locality, what did you adopt as the eastern boundary?

A. The old boundary line.

35th Q. Where was that with reference to the Michler line, if you know?

A. It is east of the Michler line.

36th Q. Were you acquainted with the location of the Michler line?

A. Yes, sir.

37th Q. How did you know of it?

A. I believe the first knowledge I had of the Michler line quite a number of years ago a man who was county surveyor here, lived at Evansville. I will tell you his name in a moment. I went with him to locate some property that adjoined the Maryland line, and—I would like to name him; I will get it directly—in surveying we came to this Michler line. I was not familiar with the Michler line, or any other line. That was the beginning of my surveying in this section of country. It was not on the Crane land, however. It was further north, on the Hoye lands, and this man from Evansville—we stopped at this line, and we did not have our distance. There was trouble between men who claimed the land there, and we ran on our distance and found another line, and then we retraced that old line, what I now know as the old Maryland line, and he told me about the Michler line, and then I followed it quite a number of times through this. Mr. Monroe, what was the name of the man surveying?

2705 Mr. J. K. MONROE: Baker?

The WITNESS: That is the name—A. C. Baker, Evansville.

38th Q. Is he alive or dead?

A. He is dead.

39th Q. Have you ever seen any of the monuments on the Michler line anywhere?

A. Yes, sir.

40th Q. Where?

A. At Corinth, I think, there is one. I am pretty sure there was some years ago, and over in Pleasant district, the lower end of this county. I have known of probably two over there.

41st Q. You are then acquainted with the location of the Michler line along there, are you?

A. Relative to the old line?

42nd Q. Yes, do you know where the Michler line is?

A. Yes, sir; I have been over it.

43rd Q. In surveying these Crane lands, did you stop at the Michler line or extend that east farther?

A. East to the old line.

44th Q. About what distance east of Michler's line?

A. I could not answer that question definitely, but probably thirty or forty poles in the Crane lands. I do not know.

45th Q. What do you know about the old Maryland line?

A. As to what?

46th Q. As to where it is and what marks it, and how is it known and recognized?

A. Well, through the section of country where I have been, the old Maryland line is marked on trees, and every once in awhile—I know of one or two trees that have "M" cut on them, and

2706 I take it that that is what it is for. I don't know. The lines were well marked lines a good many places.

47th Q. Along this Crane estate, do you remember anything that indicated it, or was it just pointed out to you?

A. Well, along there I do not know of any mark that would de-

signate it from any other old line other than perhaps it is a better marked line than most old lines.

48th Q. Do you know who owns the property in Maryland east of this Crane land?

A. I know who has control of it, but whether he owns it or not I do not know—or says he has control of it—John M. Browning. I do not know whether he owns it or not. He may own a good deal of land there. I don't know.

49th Q. Do you know whether the Crane land borders on the Maryland military lots along there?

A. No, I never surveyed them. You mean as to the Crane land?

50th Q. Yes, sir.

A. I don't know. I do not know anything about the Maryland side there. Farther north I do.

51st Q. I show you a patent from the Commonwealth of Virginia, dated January first, 1859, to Jacob Crane for 514 acres of land, and I will ask you whether you recognize the lands described in that patent as any part of the lands surveyed by you for William B. Crane's estate?

A. Yes, sir; a part of the same land.

52nd Q. Look at Map No. 1, prepared by Julius K. Monroe, in this cause, and state whether the 514 acres is located on that map as you understand it with reference to adjoining lands?

Objected to by counsel for the State of Maryland.

A. I believe it to be located properly. I think it is. I have no doubt about it.

2707 53rd Q. As located, would it be within the lines of the W. B. Crane's heirs lands?

A. It would.

54th Q. Now, the balance of the Crane lands not included in the 1247 acres, which we have spoken about, or the 514 acres Joseph Crane survey just mentioned, would lie in what direction from those tracts?

A. West and north.

55th Q. And adjoining?

A. And adjoining.

56th Q. And extending up to where?

A. Well, they would extend to what I know as the Messenger tract. Mr. Monroe would understand that, I think. Senator, perhaps you might not—from these lands, perhaps two or three miles.

57th Q. Northward?

A. I will have to look. They would come in there some place (indicating) perhaps a mile and more.

58th Q. Do you know in what state and county these Crane lands were assessed for taxation?

A. Well, let me see. I know personally of a part of them—paid the taxes on a part of them for Mr. Crane, and for later owners in Preston county, West Virginia, and believe all of them have always been assessed, and the taxes paid in Preston County, West Virginia. I am absolutely sure of it, so far as a man can be.

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59th Q. What connection, if any, did you have with any of these Crane lands other than making a survey of them?

A. I had control of about nine hundred acres for some four years. Those taxes were paid in Preston County, West Virginia. I had control of three or four small tracts for the heirs of William B. Crane, and paid the taxes for him—for the heirs in this
2708 county, which are out in here (indicating) not shown on that map at all, after most of the land had been sold off, and these were just odd pieces left.

60th Q. Did you at any time have control of any portion of the land shown on this map No. 1?

A. Yes, sir.

61st Q. What portion?

A. Extending from the Maryland line out here—let me see—beyond this Brown line.

62nd Q. And was it upon those lands that you paid taxes for the Cranes in West Virginia?

A. Yes, sir. Not for the Cranes, for a later owner.

63rd Q. For a later owner?

A. Yes, sir, the Wardwells.

64th Q. When did the Wardwells acquire title to those lands?

Excepted to by counsel for the State of Maryland, on the ground that the record is the best evidence.

A. In the neighborhood of 1878 or 1879—the Wardwells that I held under. Their father owned it before that time for some years.

65th Q. When was it you took charge of them?

A. From 1881 to 1885.

66th Q. Did you pay the taxes on them for the Wardwells during that period?

A. I did, to A. Staley Shaw.

67th Q. To the sheriff of Preston County, West Virginia?

A. Yes, sir.

68th Q. Do you know of those lands being taxed by the Maryland authorities, any of them?

A. They were not.

69th Q. Do you know of any jurisdiction being exercised by the State of Maryland or its authorities on that Crane land?

2709 A. No, sir; I do not know of any such jurisdiction.

70th Q. Do you know of a line being run in 1897 by W. McCulloh Brown through that country?

A. I know of points along there, never followed the line. I saw the stakes where the road crosses his line, at various points.

71st Q. Assuming that that line is something like a mile and a quarter west of the Michler line, will you state whether you ever knew of any state line to be claimed to run in that neighborhood before it was run by Mr. Brown?

A. Never was to my knowledge. The oldest residents in our country never heard of it, so far as I have heard. I have talked to some of the pretty old ones. My father is eighty-one.

72nd Q. In all your surveying in that section, did you ever know

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of any one claiming title under a Maryland patent on the land, called the Nonpariel?

A. No, sir.

Cross-examination by Mr. SINCELL:

73rd Q. Do you know where the Dunkard Glades are?

A. Not by that name.

74th Q. Do you know where the Dunkard Bottom is?

A. Yes, sir.

75th Q. Does the old road called the Butchinal road run to the Dunkard Bottom?

A. Not to my knowledge.

76th Q. Do you know where the Western terminus of that road is?

A. Let me see. Do I know anything about the western terminus of that road? I guess I don't know where the western terminus of that road is.

2710 77th Q. Where does it run to, as you know it—the old Burchinal road?

A. Coming up through Maryland——

78th Q. Do you know where it starts in Maryland?

A. No, sir, I do not know where it starts.

79th Q. To what point in Maryland do you know it?

A. Probably three or four miles beyond the old Maryland line is as far as I know.

80th Q. Where is that point?

A. I don't know. You have asked me something I don't know. After we pass over what we know as Snaggy mountain.

81st Q. That is down in Merley's Glade?

A. Yes, sir; I have been down through there hunting cattle on the old Burchinal road.

82nd Q. Merley's Glades, or the Dunkard's Glades?

A. That is the Dunkard Glades, is it?

83rd Q. Yes, sir.

A. I don't know it by that name. I have not surveyed on the Maryland side in there.

84th Q. To what point do you know that old road in West Virginia?

A. Well, not a great distance. This is pretty near on top of the mountain, you know, and you come down and come out past—come in toward—over Gregg's knob, and out in there. I do not know how far I followed it out there.

85th Q. Does it extend toward Cheat river?

A. From the Maryland line rather toward Cheat river until it passes some distance beyond Gregg's knob I know, and then I don't know what distance it goes. I never have, but I presume it is the same road that we know as the Burchinal road way up here in Valley district, but I don't know as it is the same road at all.

2711 86th Q. West of the Cheat river?

A. Yes, sir, west of the Cheat river, but I do not know as it is the same road at all.

87th Q. Is there an old road up there?

A. Yes, sir.

88th Q. Do you know about where that old road crosses the Cheat?

A. No, I do not know.

89th Q. You do not know whether it crosses the Dunkard Bottom or not?

A. I don't know. I could not answer that question at all.

90th Q. You have stated that in running out the Crane lands east—that when you reached the Michler line, you had — distance yet to go according to your calls, and that you extended your line on to the end of the distance in the deeds, reaching the old Maryland line?

A. I think you have misstated me. If I said that I did not mean it.

91st Q. What tracts did you refer to when you said that?

A. I was telling you where I had first known of the Michler line, and we were running some lands—Mr. Baker and I were running some lands out in the Cranesville neighborhood, and he showed me the Michler line, but when I surveyed the Crane land, I knew where the Michler line was, and where the old line was.

92nd Q. Isn't it a fact that the courses and distances in the old Crane deeds carried you up to what you know as the old Maryland line?

A. Yes, sir.

93rd Q. Isn't it a fact that the eastern boundary of those deeds carried you up to that point, and that that was the way you came to know the Maryland line?

2712 A. No. I knew the Maryland line before I surveyed that land.

94th Q. How did you know it?

A. Well, I had seen the old Maryland line down in the De Berry neighborhood, and along up lying between the—well, between the De Berry's and the people living on the Maryland side. Mr. Glover owned a piece of land that I knew of, and between the Ward's heirs.

95th Q. What line was it?

A. What I know as the old Maryland line.

96th Q. Who ran that line?

A. I do not know.

97th Q. Did you ever know of any one that had run it under the authority of the State of Maryland?

A. And know that to be the line he ran?

98th Q. Yes.

A. I don't know of anybody that ran that line, and don't know that that was the line he ran, because I was not with anybody.

99th Q. Just simply known as the old Maryland line because these deeds called for a line?

A. Call for this line, and known in the neighborhood as the old Maryland line.

100th Q. Did the Crane deed there call for lines running north and south?

A. One side of it ran north and south with the Maryland line.

101st Q. Have you got those deeds here?

A. No, I do not know that I have. That old one I have got may call for that. I think it does.

102nd Q. Please look at that old deed and see?

A. (Witness examines deed.) Yes, sir. (Reads.). "To a chestnut on the south side of the Burchinal road, and on the
2713 Maryland line as run by Reuben Morris, and with the Maryland line south 204 poles to pointers on the said line and to intersect a line run due east from the beginning of this deed." I read from a deed made from John Hoye to Jacob Crane, dated the first or the 10th day of August in the year 1846.

103rd Q. Who was Reuben Morris?

A. Reuben Morris was an old county surveyor of Preston county.

104th Q. West Virginia?

A. Yes, sir.

105th Q. Did you ever hear of Reuben Morris running a boundary line between the state of Maryland and the State of Virginia?

A. Under the authority of the state?

106th Q. Yes, sir.

A. No, sir.

Redirect ex. by Mr. PRICE:

107th Q. Mr. Elliott, what was the tradition and reputation amongst the old inhabitants and surveyors in regard to the location of the old Maryland line in that country?

Objection to the question as being a question on re-examination.

A. The old Maryland line as I know it, and as it is now known in the neighborhood along through Preston county, and as I ran it different places, quite a good many places in fact, is the same line, and the only old Maryland line I have ever heard of.

108th Q. Is there a reputation and tradition in that neighborhood among the old people as to that being the line?

Objection by counsel for the State of Maryland.

A. That was the understanding with all the people, that
2714 I talked to, that that was the Maryland line. I don't know whether that answers your question, or whether I properly understand your question, or whether I can answer it. That is the only one I know of.

109th Q. I was speaking about people who are now dead.

A. Well, now, you take for instance old Joseph De Berry, who has been dead for years, and Samuel De Berry, and William B. Crane, and all those people—they recognized that as the Maryland line. I knew them years ago.

110th Q. And this man Baker?

A. Yes, sir.

111th Q. Is he living?

A. No; he is dead.

112th Q. He was the county surveyor?

A. Yes, sir. And Reuben Morris and Bucher Fairfax—they were

surveyors in this county for years, old men, and have been dead for years—they all recognized it as the Maryland line.

113th Q. You spoke something about the Ward lands. How did their eastern boundary on the Maryland line coincide or compare with the line of these Crane lands?

A. One and the same line?

114th Q. One continuous line?

A. One continuous line.

115th Q. And the Hoye lands above there you spoke about surveying?

A. One and the same line.

Recross-examination by Mr. SINCELL:

116th Q. Were you with Mr. Monroe at the time he located the line for the State of West Virginia in this case?

A. No, sir.

2715 117th Q. Do you know whether the line which you have spoken of as the old Maryland line is the same line that Mr. Monroe located in this case as the boundary between Maryland and West Virginia?

A. Within myself not. I wasn't there. I saw where he cut the brush, or somebody did: presumed he did, but I wasn't with him. I do not think I was there a single day.

(By Mr. PRICE:)

118th Q. Mr. Elliott, will you make an outline map of the W. B. Crane lands, showing their situation with reference to the Maryland line and Burchinal road, and lands lying south of them, and send it to the notary public to be filed with your deposition, marked "Elliott Exhibit No. 2."

Exception by counsel for the State of Maryland.

A. I will.

119th Q. Showing also the Michler line as near as you can.

A. I can show the Michler line, the old line, but this line I do not know anything about, the Brown line. I have never been on that line at all.

Objection by counsel for the State of Maryland to the introduction and filing of this plat by the witness.

Further this deponent saith not.

(Signature of witness waived by stipulation of counsel.)

2716 No other witnesses appearing, the further taking of these depositions is adjourned until Monday, July 23rd, at the same place and between the same hours.

2717 KINGWOOD, W. VA., *July 23d*, 1906.

The taking of these depositions is resumed.

Appearances: For the State of Maryland, E. E. Sincell, Esq.; for the State of West Virginia, Geo. E. Price, Esq.

H. J. FREAR, a witness produced on behalf of the State of West Virginia, having been duly sworn, deposes as follows:

(Examined by Mr. PRICE:)

1st Q. Give your name, your age, your place of residence and your occupation.

A. H. J. Frear; forty-two; Oakland; land agent and civil engineer.

2nd Q. Have you ever been connected with the Preston Lumber & Coal Company?

A. I have.

3rd Q. In what capacity, and how long?

A. I worked a period of twelve years as land agent and surveyor and civil engineer.

4th Q. What acquaintance have you with the tracts of land known as the Kunkle tract, which was owned by the Preston Lumber & Coal Company?

A. I am very familiar with it; have traced all its lines.

5th Q. Do you mean that you have surveyed it out?

A. I have surveyed it out.

6th Q. Did you ever make a plat of it?

A. I made a plat of it.

7th Q. When did you survey it?

A. About 1901 or 1902.

8th Q. From whom did the Preston Lumber & Coal Company get that land?

A. From Mrs. Mary Kinkle.

9th Q. When?

A. In 1891.

10th Q. Were you connected with the company at that time?

A. Not at that time; no, sir.

2718 11th Q. How long have you had connection with the company?

A. Since 1894.

12th Q. Does the Preston Lumber & Coal Company still own that land?

A. They do.

13th Q. I show you a plat endorsed in the right hand lower corner, "Map of the Preston Lumber & Coal Company's Kunkle lands, Preston Co., West Va." I will ask you whether you ever have seen that map before?

A. Yes, sir.

14th Q. What do you know about it?

A. I made the map after having completed the survey of the Kunkle lands.

15th Q. Did you make it entirely as it is now?

A. Yes, sir; with the addition of the patent lines there.

16th Q. You had better explain that?

A. The patent lines were put in from the outlines of the whole plat.

17th Q. Just explain about that, will you?

A. What do you want in that connection? I prepared two plats, one showing the patent lines, and one showing simply the outlines.

18th Q. This plat originally showed the outlines without the patent lines.

A. The outlines and streams and adjoining owners, without the patent lines.

19th Q. Who put the patent lines on it?

A. This gentleman here, Mr. Downs.

20th Q. To-day?

A. To-day.

21st Q. How did he put them on?

A. From the second plat showing the latent lines only.

2719 22nd Q. He simply placed this map over the other, and traced out the patent lines from that?

A. Yes, sir.

23rd Q. Are the patent lines correctly laid *laid* down there, as you have them on your other map?

A. Yes, sir.

24th Q. I notice that there is a patent laid down on the map designated as "Hoye's patent, 500 acres." Is that according to your location of the Hoye 500 acres——

A. Yes, sir.

25th Q. In its relation to adjacent lands and in relation to the Michler line and the old state line?

A. It is.

26th Q. Does that Hoye patent call to run with the Maryland line?

A. I cannot recall.

Counsel for the State of Maryland objects to the question on the ground that the patent is the best evidence of its calls.

27th Q. I will ask you, Mr. Frear, why you located that patent as far over as the Deakins old state line, and what evidence you had that that point was the old state line.

A. I cannot recall the circumstances at present, but I remember of having the old patent with me at the time I made this location, and whether or not the old patent papers call for the old state line, or whether it was pointed out to me by old residenters I cannot really say. I cannot tell, don't remember, to tell the truth. I was able to locate the Michler state line by reason of cutting the timber, and by noting it as I passed it in the outside lines.

2720 28th Q. Is that Michler line observable on the ground?

A. Yes, sir.

29th Q. Has it been pointed out to you in any way by anybody?

A. Why, yes, sir.

30th Q. Do you know any of the monuments on it?

A. I have seen them; yes, sir.

31st Q. Do you remember what tree, if any, stands at the north east corner of that Hoye patent of 500 acres?

A. A large chestnut, as I remember, a stump still standing there the last time I was there.

32nd Q. Was there anything else there besides the chestnut that you remember?

A. I think a locust stake in the chestnut is my recollection.

33rd Q. Was this a chestnut stump or tree at the time you were there?

A. A chestnut stump.

34th Q. About what is the length of that line, that eastern line of that tract, if you remember?

A. I should think about 220 or 230 rods.

35th Q. Could you tell now by the map?

A. Yes, sir; the map is made on a scale of 50 poles to the inch—225 rods, isn't it, Mr. Monroe?

Mr. MONROE: Not so much as that.

(The WITNESS—measuring on map:) About 210 rods.

36th Q. What survey lies south of that on the Maryland line?

A. The next adjoining tract south of the Hoye 500 acres is Ashby, 300 acres.

37th Q. What survey is north of it?

A. The next tracts north are the Elizabeth White and the Miller, I think—Benjamin Miller.

38th Q. Do you remember what original tract they came from?

2721 A. I think from the Hooker.

39th Q. Is there an Ashby 200 acre survey in there?

A. Yes, sir; Elizabeth White is part of the Ashby 200 acre survey.

40th Q. What survey lies east of it in Maryland, if you know?

A. I have it marked Ashby on my plat. I am not positive as to what is the name of the patent.

41st Q. I will ask you to look at Map No. 1, prepared by Julius K. Monroe, in this case, at the body of land designated Preston Lumber & Coal Company, and state whether that property is correctly laid down or not upon that map with reference to the adjacent tracts, and the Maryland boundary lines, as you understand it, and have surveyed it?

A. It is.

42nd Q. And what have you to say in that respect in reference to the tract marked John Hoye 500 acres?

A. It is correctly laid down.

43rd Q. Assuming that the line, the heavy black line running due north represented by a stake on Lauer's hill, just above the Hoye 500 acres, is the Michler line, does the Preston Lumber & Coal Company's land extend east of that land?

A. It does.

44th Q. About how far east?

A. About—I would have to put my scale on the other map. I do

not just remember (Measures on map) About fifty rods—between fifty and sixty.

25th Q. Where would that chestnut stump be on this map No. 1, which you have spoken about?

A. It would be, I suppose at this point here (indicating).

2722 Exception by counsel for the State of Maryland to the last question and answer.

The WITNESS: It would be the point designated as "C1".

Objection by counsel for the State of Maryland to the witness testifying as to any locations upon the plat unless he further testifies that he was present on the survey and pointed out the points referred to in his testimony to the surveyor, Mr. Monroe.

26th Q. I will ask you to designate the corresponding point on the map prepared by you about which you have testified?

A. I have also designated that as the point C1 on the map I prepared.

27th Q. Do you know in what county and state those Kunkle lands of the Preston Lumber & Coal Company have been assessed for taxation?

A. In Preston county, West Virginia.

28th Q. How long have they been so assessed?

A. Ever since they were acquired by the Preston Lumber & Coal Company.

29th Q. Since 1891?

A. Since 1891.

30th Q. How do you know that?

A. By reason of having charge of the payment of all taxes.

31st Q. Have any part of those lands been assessed in the State of Maryland?

A. They have not.

32nd Q. Do you know where Mr. W. McCulloch Brown, the surveyor in this case ran a due north line in 1897?

A. I only know by the marks on the ground, such as the cutting of timber and having passed the party on one occasion.

2723 33rd Q. Well, you do know then about where the line is?

A. About where the line is, yes, sir.

34th Q. Did it run through these lands of the Preston Lumber & Coal Company?

A. Yes, sir.

35th Q. Where did it run with reference to the Michler line?

A. About a mile and a quarter west.

36th Q. Had you prior to that time ever heard of any Maryland state line, boundary line, being in that locality?

A. No, sir.

37th Q. Please file with your deposition, marked "Grear Exhibit A" a blue print copy of the map prepared by you, and about which you have already testified in this case?

A. I will do so.

Cross-examination by Mr. SINCELL:

38th Q. In your capacity of land agent and civil engineer of the Preston Lumber & Coal Company, has it been a part of your duties to purchase lands and timber for the company.

A. It has.

39th Q. Have you ever purchased any timber for the Preston Lumber & Coal Company or any land for said company along or in the neighborhood of the Michler line?

A. I have.

40th Q. Do you know where a tract of land called the "Resurvey of all the chances" lies?

A. I do.

Objection by counsel for the State of West Virginia.

41st Q. Who owns said tract of land?

2724 A. Mr. D. E. Offutt.

42nd Q. Where does Mr. D. E. Offutt live?

A. Oakland.

43rd Q. Do you know from what sovereignty the title to the tract of land called the "Resurvey of all the chances" comes?

A. The state of Maryland, I understand.

44th Q. Please state whether or not the Preston Lumber & Coal Company ever bought any timber from Mr. D. E. Offutt off of this tract?

A. We did.

(By Mr. PRICE:)

45th Q. Was the contract in writing?

A. It was.

Objection by the counsel for the state of West Virginia.

(By Mr. SINCELL:)

46th Q. Up to what line or how far west did Mr. Offutt sell the timber off of that tract of land to the Preston Lumber & Coal Company?

Objection by the counsel for the State of West Virginia, on the ground that the written paper is the only proper evidence.

A. Up to the Michler state line.

47th Q. What other tracts of land, if any, has the Preston Lumber & Coal Company, to your knowledge, bought timber off of on the east side of the Michler line?

A. Purchased from William Bittner and from the Wilson Lumber Company.

48th Q. What tract of land was it that you purchased the timber off of from the Wilson Lumber Company?

A. Troas resurvey.

49th Q. From what state is that title derived?

A. Maryland.

50th Q. Up to what line did you purchase the timber from

2725 the Wilson Lumber Company?

(By Mr. PRICE:)

51st Q. Was that in writing?

A. Yes, sir.

Mr. PRICE: Then I object without the prodiction of the writing.

The WITNESS (Answering Mr. Sincell's last question): Up to the Michler state line.

(By Mr. SINCELL:)

52nd Q. Have you ever purchased any timber along the Michler state line and to the east of that line adjoining the line from any other tracts in Maryland for the Preston Lumber & Coal Company?

A. I do not recall any other except William H. Bittner.

53rd Q. Do you know the name of the tract that he owns?

A. I think it is a part of the "Mount Pleasant," or it is one of those that adjoin across there.

54th Q. Is it "Covent Garden"?

A. Yes, sir; Covent Garden instead of Mount Pleasant.

55th Q. Is that a Maryland or Virginia patent?

A. Maryland, as I understand it.

56th Q. Up to what line did you buy the timber on that tract?

A. The Michler state line.

57th Q. Please look at the map now shown you, being Map No. 1, prepared by the State of West Virginia in this case, and state at what point the point marked "C1" is located on said plat with reference to the lines running north and south on said map.

A. It is about fifty poles west of what I understand to be the Michler state line—east of what I understand to be the Michler state line.

58th Q. Does said point strike any of the lines mentioned in this case as the state line.

A. It is very close to what is commonly called the Deakins state line.

2726 59th Q. Is it or not according to this plat in the Deakin state line?

A. I should so take it, that it is in the Deakin state line, if I understand this plat correctly. Is this the Deakin state line?

Mr. PRICE: This line is the line Mr. Monroe ran.

The WITNESS: At the time I made this location on my map according to this plat (indicating).

60th Q. It shows it to be right in Mr. Monroe's reference line, does it not?

Mr. MONROE: My reference line ran right between those two points.

61st Q. The question is, is it or not in the Deakin state line according to this plat?

A. I do not know where the Deakin state line is on this plat, unless it should be this line (indicating).

62nd Q. Please look at the plat which you have prepared, and

have testified to, and state where said point appears upon your plat with reference to the Deakin old state line?

A. Just a very few rods west.

63rd Q. How many rods west?

A. I should think in the neighborhood of ten.

64th Q. Now, will you state whether or not the location upon the map No. 1 and the map you have prepared of that point correspond.

A. They seem to correspond.

65th Q. Have you measured the distance on map No. 1, from the Michler line to the point C1?

A. I have not.

66th Q. Will you please do so. What is the distance?

A. (Measuring on map.) It seems to be about forty-five or fifty rods.

2727 67th Q. Is it forty-five or fifty?

A. Well, it is between the two—about fifty rods.

68th Q. Please look at your map and state what the distance is.

A. It seems to be about forty-three or forty-four rods.

69th Q. What is the distance according to your plat between the Michler state line and the Deakins old state line as you designate it on your plat?

A. Just a trifle over fifty rods or about fifty rods.

Redirect ex. by Mr. PRICE:

70th Q. When did the Preston Lumber & Coal Company purchase from Mr. Offutt the timber on the land opposite Benjamin Miller's property, of which you have spoken?

A. About 1902, or 1903.

71st Q. About 1902 or 1903?

A. Yes, sir.

72nd Q. Where is Benjamin Miller?

A. Benjamin Miller is dead.

73rd Q. Who owns the land opposite this Offutt land on the West Virginia side?

A. Benjamin Miller's estate.

74th Q. Do you know to what line they claim?

A. They claim, as I understand it to the Deakins line.

75th Q. Then Offutt sold to the Preston Company timber on land between the Deakins line and the Michler line claimed by the heirs of Benjamin Miller?

A. Yes, sir, and also claimed by Mr. Offutt.

76th Q. The Wilson Lumber Company Timber which was purchased by the Preston Lumber & Coal Company—at what point on map No. 1 in this cause would that be?

A. It would be designated as lying directly north of the

2728 Backbone mountain for a distance of about two miles.

77th Q. Who owns the land on the West Virginia side along there?

A. Owned by the heirs of Stalnaker—J. W. Stalnaker, I think.

78th Q. Who owns the timber on those lands?

A. The Preston Lumber & Coal Company.

79th Q. Did they purchase the Stalnaker title in there?
A. Yes, sir.
80th Q. The timber?
A. Yes, sir.
81st Q. So that if they bought from the Wilson Lumber Company on the Maryland side up to the Michler line, they bought from the Stalnaker title on the West Virginia side up to the old Deakin line, did they?
A. With the Stalnaker's I do not know that the question was ever raised with reference to the state line, and I think the Stalnakers only deeded up to the Michler state line.
82nd Q. But the Preston Lumber & Coal Company owns the timber on both sides?
A. Yes, sir; the timber on both sides.
83rd Q. Therefore no question can arise against itself from itself as to the ownership of the timber between those lines?
A. Not on those tracts I can't, no, sir.
84th Q. When did you boy the timber from the Wilson Lumber Company?
A. They bought the timber from the Wilson Lumber Company about 1896?
85th Q. And when did they buy from Stalnaker?
A. About—a short time previous, about 1895.
2729 86th Q. And when did they buy from W. H. Bittner?
A. About the same time—about 1895.
87th Q. Do they own the timber on the West Virginia side opposite the Bittner land?
A. Not at the present time. That has been lumbered off.
88th Q. They did own it?
A. Yes, sir; they did own it, bought it from the Stalnakers.
89th Q. The Stalnakers land lies opposite the Bittner land also.
A. Yes, sir.
90th Q. So that there can be no conflict as to that timber growing out of the Maryland state line?
A. No, sir.
91st Q. Did the Preston Lumber & Coal Company purchase any land from Loar?
A. From Mrs. Mary Loar, yes, sir.
92nd Q. Where does that lie?
A. It lies in Preston county, West Virginia.

(Mr. SINCELL:)

93rd Q. Was that a subject of written contract?
A. Yes, sir.

Objection by counsel for the State of Maryland unless the contract is introduced.

(By Mr. PRICE:)

94th Q. Was a deed made by Mr. Loar to the company?
A. Yes, sir.
95th Q. Did they purchase the land itself, or just the timber?

A. First purchased the timber, and afterward the land itself.

96th Q. When?

A. Purchased the timber in about 1901, from Isaac McDonald, who had a contract with the Loars, and then they purchased
2730 the land outright from Mrs. Mary Loar in about 1904.

97th Q. Do you know of what original tract that is a part?

A. It is, as I understand it, a patent to D. H. Loar, or rather he owned it, for 1266 acres.

98th Q. Was there an older patent on the same territory?

A. I don't know.

99th Q. Where did you say that land lies?

A. It lies in Preston County, West Virginia, just north and west of Backbone mountain.

100th Q. Now, did it lie along the state line?

A. It did.

101st Q. To what one of the state lines did the purchase extend?

A. The old Deakins line.

102nd Q. Have you surveyed that tract of land?

A. Yes, sir.

103rd Q. And ran it by the old Deakins line?

A. Yes, sir.

(By Mr. SINCELL:)

104th Q. Your company had previously bought from the Wilson Lumber Company the timber on this land under the Maryland title, had it not?

A. On the east side; yes, sir.

105th Q. On the north side of the Backbone mountain?

A. Yes, sir, and east of the Michler state line, that is, the portion where the two adjoin.

And further this deponent saith not.

(Signature of witness waived by consent of counsel).

2731 JULIUS K. MONROE, a witness produced on behalf of the State of West Virginia, having been duly sworn, deposes as follows:

(Examined by Mr. PRICE:)

1st Q. State your name, your age, your place of residence and your occupation.

A. Julius K. Monroe; age, forty-two; Kingwood, West Virginia; civil engineer.

2nd Q. How long have you lived in Preston County, West Virginia?

A. Forty-two years, nearly.

3rd Q. You were born then in Preston, and have lived there all your life? Is that correct?

A. With the exception of perhaps a year, or not so much.

4th Q. How long have you been engaged in the profession of civil engineering?

A. More or less since I was fourteen years old.

5th Q. What branches of the work of civil engineering have you been employed at?

A. Land surveying, railroad and mining.

6th Q. Are you one of the surveyors who was selected to act under the order and stipulation in the cause of the State of Maryland against the State of West Virginia on the survey?

A. I am.

7th Q. What has been the extent of your experience in land surveying in Preston county, West Virginia?

A. Quite extensive. I have spent fifteen or twenty years of my life at that work, and made a specialty of that class of work until recently.

8th Q. To what extent have you surveyed lands in Preston county?

A. Surveyed in all parts of the county.

9th Q. What familiarity have you with the locations of
2732 the original patents and land titles in Preston county?

A. I am quite familiar with most of them, and have spent a great deal of time in collecting data, etc., relative to the older land grants in the county.

10th Q. What is the condition of the public records of Preston county, the public land records of Preston county, and from what circumstances does that condition arise?

A. The land records since 1869 are all right. Before that—of course the records were burned at that time—1869.

11th Q. How did they come to be burned?

A. The court house was burned, and the records, with the exception of the surveyor's book and a few land books, I think, were all destroyed.

12th Q. By land books, what do you mean?

A. The assessment books—land assessment books.

13th Q. Were the books in which the deeds and grants were recorded, destroyed?

A. All destroyed up to that time.

14th Q. From the formation of the county up until 1869?

A. Up to 1869, yes, sir.

15th Q. You spoke of having been engaged in other branches of civil engineering work. Will you state what they have been.

A. Engaged in the laying out and construction of railroad work, at present chief engineer of the Morgantown & Kingwood Railroad Company, being constructed in this county, and prior to that time I did mining engineering for most of the coal companies in the county for a number of years, and was surveying, and making maps of the coal fields, and work of that character.

16th Q. What part of the surveying or engineering for
2733 the Morgantown and Kingwood Railroad Company have you done?

A. Chief Engineer of the work.

17th Q. What part of the work have you done?

A. I have the management of the work. Of course I did some

actual field work myself, but ordinarily I have control of the engineers in charge of that work.

18th Q. What is the extent of the road?

A. From Morgantown to Rowlsburg—about fifty miles.

19th Q. Through Kingwood?

A. Yes, sir.

20th Q. Is it completed?

A. Not yet completed; no, sir.

21st Q. Have you been in charge of that work from the outset?

A. From a station called Bretz, all the new work recently done, I have had charge of.

22nd Q. Where is that station?

A. About seventeen miles east of Morgantown. This new work is an extension of the former Morgantown & Kingwood road from Bretz to Rowlsburg.

23rd Q. How far have you been present during the time that the survey in the field was being done in this cause, both on behalf of the State of West Virginia, and on behalf of the State of Maryland?

A. I was present during all the time, except a short time while Mr. Brown was running the Potomac River from Dobbin toward the state line.

24th Q. About what length of time was that? Do you know?

A. I cannot recall just how long it was. I should judge about a week altogether.

25th Q. Were you in charge of the instrument and of the survey during the first surveying that was done in this cause on
2734 behalf of the State of West Virginia?

A. I was.

26th Q. When did that survey begin?

A. The survey began on October 4th, 1894.

27th Q. Where did you begin?

A. At the Fairfax stone.

28th Q. What surveyor, if any, was present during that survey representing the State of Maryland?

A. Mr. John Harned was present representing the state of Maryland all the time.

29th Q. Speaking generally, what was the work done on that survey?

A. We ran a reference line by the needle, from the point known as the Fairfax stone northward to the Pennsylvania line, and during the running of the line took such references as we deemed necessary to locate land titles along the line, streams, roads, buildings, and we also ran reference lines to the different known points on the Michler line.

30th Q. Did you take references to any other lines besides the Michler?

A. We took references to the line pointed out as the old state line wherever we could.

31st Q. What were your instructions and what was the purpose of

doing the work which you have mentioned—the running of the reference line, etc.?

A. Our instructions from counsel representing the State of West Virginia——

Mr. SINCELL: Were those instructions in writing?

Mr. PRICE: No.

The WITNESS: Our instructions from counsel representing the State of West Virginia were to do such surveying as would be
2735 necessary to locate the land grants lying along and adjacent to the old state line, as it was termed, and any other information as to the settlements, and houses, roads, and streams, and to locate the Michler line, so that it could be laid down, as well as the land tracts, upon a map showing the relative positions in regard to these lines.

32nd Q. You began at what point?

A. A point shown to me as *to* the Fairfax stone by Mr. George Mosser.

33rd Q. Will you state what you found at the point shown you as the Fairfax stone?

A. We found a rough stone monument, consisting of several stones loosely laid, about three and a half feet high by two feet square, standing between the head springs of a branch of the Potomac River, and pointed out by Mr. Mosser as standing directly south of and against the stone known as the Fairfax stone, which, however, is not now there, having been destroyed by some person.

34th Q. How many springs were there at or about the Fairfax stone?

A. Three springs. Do you want their positions?

35th Q. Is the position of those springs with reference to each other, and with reference to the Fairfax stone set forth in your report?

A. Yes, sir.

36th Q. And in the report of Mr. W. McCulloh Brown, surveyor in this case?

A. Yes, sir.

37th Q. Are they correctly set forth in Mr. Brown's report?

A. Yes, sir.

38th Q. And evidence?

A. Yes, sir.

2736 39th Q. How many times have you been to the Fairfax stone?

A. Oh, I suppose half a dozen different times, more perhaps.

40th Q. Can you recall the times when you were there?

A. I was there when I first began this survey in October, 1894, and was there on several occasions while Mr. Brown's party was surveying.

41st Q. When was that?

A. That was in 1897, I think, and I was there again a number of times in 1899, I believe it was, while surveying streams in the neighborhood—in August and September, 1899?

42nd Q. In what seasons of the year then have you been at that stone?

A. In the fall of the year.

43rd Q. And also in August and September?

A. Yes, sir.

44th Q. What was the nature and character of those springs with reference to the volume of water issuing from them?

A. Water at all times, a small volume of water, right at the source of the stream, and sometimes lower than at other times on account of dry weather, I believe, however, at all times I was there, there was water in one or more of the springs.

45th Q. Now, from the Fairfax stone, you ran you said a reference line to the Pennsylvania line. According to what degree on the compass, if any, did you run it?

A. We ran the line north three degrees and forty minutes east. Assuming that the old Deakins line had been run with a needle instrument, at the point of the needle in 1789, we calculated
2737 that a line north three, forty east at this time would about retrace that line, which we desired to do as a matter of convenience, making our reference line shorter.

46th Q. With what kind of an instrument did you run this line and do this surveying in 1894?

A. A Young & Son's compass instrument—a needle instrument.

47th Q. Was it a surveyor's compass?

A. A surveyor's compass; yes, sir, that I consider a very good instrument.

48th Q. What was its condition with reference to having been tested for accuracy?

A. It was in first class condition, as good a condition as a needle instrument could be placed in. I had made frequent tests just prior to the running of this line for that purpose.

49th Q. Did you measure the line?

A. We did.

50th Q. How did you measure it?

A. With a steel chain, a two pole chain.

51st Q. Horizontal or surface measurement?

A. Horizontal measurement.

52nd Q. What, if any, reason did you have for using the surveyor's compass in this work rather than the transit?

53rd. A. As I understood, the original lines and land grants had been run out with a needle instrument, and we concluded that they could be better traced and located with a similar instrument, and for that reason we adopted that kind.

54th Q. Is that your judgment that they could be better traced upon the ground by a compass than the transit?

A. Yes, sir, it is.

Exception by counsel for the State of Maryland to the question and answer.

2738 55th Q. What is the instrument used in land surveying generally?

A. Generally a needle instrument, sometimes a telescope, and sometimes a plain compass.

56th Q. Isn't the transit a needle instrument?

A. Yes, sir.

57th Q. Do you intend to distinguish the compass from the transit by calling the compass a needle instrument?

A. Yes, sir, because the compass is operated wholly by the needle, while the transit is sometimes used to foresight and backsight without reference to the needle.

58th Q. As between the transit and the compass which one of those two is used most frequently and ordinarily in land surveying?

A. The compass instrument.

59th Q. Why?

A. Because it is a more portable instrument, and usually the needle is a longer and better needle than there is on the transit.

60th Q. In using the compass, do you make long or short sights of the instrument generally?

A. Generally somewhat shorter than with a transit instrument—can get very long sights back——

61st Q. At each point where you set the instrument, how do you determine your course from that point?

A. By the needle alone.

62nd Q. By the needle alone?

A. Yes, sir.

63rd Q. When you are running with the transit as such, in what way do you determine your course from one point to another?

A. If you are running a magnetic line, you determine it by the needle alone.

64th Q. And if you are not running a magnetic line—just 2739 go on.

A. If a fore and back sight line, the line is produced by fore and back sights, regardless of the needle, only using the needle as a rough check.

64th Q. What do you mean by fore and back sights? Please explain.

A. The instrument is placed at some initial point, from which point a point is set in the line intended to be run ahead. The instrument is then taken forward, and carefully set over this point, and the back sight taken up on the initial point, the telescope reversed, and the line produced in that manner, or the telescope is sighted to the initial point and an angle of one hundred and eighty degrees turned, on the limb of the instrument, which would produce a straight line ahead.

65th Q. Then having taken the back sight to the initial point, how do you get forward?

A. As I stated, we take the back sight to the initial point, reverse the instrument, reverse the telescope, set another point forward, and then move to that point and continue.

66th Q. How do you determine that point forward, where it is to be?

A. By sighting to the initial point, revolving the telescope, and set-

ting a point in the line ahead in the line of sight of the instrument.

67th Q. So as to make the three points in the same line, is that right?

A. Yes, sir.

68th Q. Then you go forward from point to point in that way, do you?

A. Yes, sir.

69th Q. And your effort all the time is to make each sub-
2740 sequent point in an exact line with the points through which you have already passed?

A. That is the object; yes, sir.

70th Q. In doing that, do you run by the needle?

A. No, sir.

71st Q. If then you at any point in that line from the initial point to the first point, or from any subsequent point to another, should get the wrong course, would you ever be able to correct that in the subsequent running of that line?

A. Not without rerunning the line.

72nd Q. In other words, then, as I understand it, a transit line is such as is run without reference to the magnetic meridian? Is that right?

A. Usually. Sometimes you start on the magnetic course and continue by angles.

73rd Q. But you do not run by the pointing of the magnetic needle?

A. No, sir.

Q. So that if a line were originally run according to the pointing of the magnetic needle, and it were a line of considerable length, would you expect to be able to retrace it accurately by running it with the transit without the needle?

A. No, sir.

74th Q. How long has the transit instrument been in use in this country in land surveying, so far as you know?

A. It has been in use more or less ever since it was invented, I believe, in 1827. It is not commonly used in land surveying, except where the land is very valuable, and there they use it by angles and not by the needle.

75th Q. Do I understand you to say you believe it was in-
2741 vented in 1827?

A. Yes, sir.

76th Q. So that in 1789 and prior to that time, a line run northward from the Fairfax stone would not have been run by a transit instrument?

A. Not at all likely.

Exception to the question by counsel for the State of Maryland.

77th Q. What is the difference between running a line by the surveyor's compass on the ground, and running it by astronomical observations upon the North star?

A. The line on the ground run by a compass instrument is governed wholly by the magnetic needle, while an astronomical line is

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run by the star or the sun, and is a very difficult and expensive operation, not available for ordinary land work at all.

78th Q. Take a line thirty-six miles long and run it due north with a surveyor's compass, and then begin at the same point and run a due north line according to the north star and by astronomical observations, would the two lines conform to each other?

A. No, sir.

79th Q. Why not?

A. Because of what is termed the declination of the needle. In the latitude of the Fairfax stone and the Pennsylvania line, the magnetic needle changes, and the farther north you go the more it changes, the magnetic needle varying rather more to the eastward the farther north you go.

80th Q. Is that perceptible in a thirty six mile line?

A. Yes, sir, it would be. It would make it forty or forty five minutes,—would change it that much, I believe we determined, on our line.

2742 Mr. BROWN: I believe it was forty-three.

The WITNESS: Forty three.

81st Q. Are there other causes that would prevent those lines from conforming to each other?

A. Well, there are local causes that might prevent them. Of course, the needle is not so accurate as the other.

82nd Q. What effect would local causes have?

A. The needle changes sometimes from day to day quite a good deal, one way and another. Very seldom as much as fifteen minutes in a day. I have known that much on one or two occasions, swings a little east of the line you are running in the forepart of the day, and back a little ways in the after part of the day, what is called the diurnal change of the needle—more in hot weather than cold.

83rd Q. If you keep on running from day to day thirty-six miles, will these diurnal variations offset one another, get back to the same line?

A. Practically so I should judge.

84th Q. Those variations are always one way are they?

A. They are always one way in the fore part of the day, and the other in the after part, so that running all day long we consider in ordinary surveying that it balances up, and we do not take account of it.

85th Q. Then there are other causes that bring about a variation in the needle, are there not?

A. Yes, sir. Electric storms disturb the needle considerably at times. That, however, does not usually last but a short time.

86th Q. What is the difference, if any, between the variation of the needle, and the declination of the needle?

A. The variation of the needle means the variation between the point of the magnetic needle at different times. The dec-

2743 lination of the needle means the angle formed by the needle and the true meridian, the true north and south line.

87th Q. What is necessary in order to run a true meridian by astronomical observation, speaking generally?

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A. Generally speaking, you have to be supplied with very expensive instruments, and the observations on Polaris usually, being the closest star to the north pole, is a very refined process. The equipment and the observations are usually handled by experienced people.

88th Q. When do those observations have to be made, and how often? How much of it?

A. Dr. Bauer spent a number of days at each of his stations on that line taking observations on Polaris, and other circumpolar stars, as well as observations on the sun for latitude, etc.

89th Q. How long was he locating the true meridian line on the survey in this cause?

A. He retraced the Michler line, reran that line, and ran another line about a mile and a quarter west of that line, and about thirty-six miles long, and it occupied him, I should judge, about three months, or four.

90th Q. Then what would you say as to the practicability of running property lines and boundary lines, which must be frequently adverted to and retraced on the ground, by the method of astronomical observations?

A. I should say in all ordinary cases, it would be very impracticable.

91st Q. Suppose a line thirty-six miles long was located by astronomical observations, and toward the middle of that line in course of years the monuments which were placed there should be destroyed or obliterated, and a land owner owning land extending several miles along that line in that locality desired to find
2744 out his property lines, how would he do it?

Excepted to by counsel for the State of Maryland on the ground of irrelevancy.

A. It would be a very difficult thing to do, too expensive in an ordinary case for a property owner to attempt it by astronomy.

92nd Q. Then if he could not find the monuments on the ground at each end or at the opposite direction from his property, he would have to resort to the method which you have described in order to get accurately his property lines, would he not?

A. That would define his lines as accurately as they are ordinarily defined on the ground.

93rd Q. I mean, he would have to take the astronomical observations as Dr. Bauer did if he wanted to find that line again, wouldn't he?

A. Yes, sir.

94th Q. If the monuments were not there? The ordinary compass surveying for a long distance would not as I understand it retrace that astronomical line?

A. No, sir.

95th Q. Is the ordinary civil engineer and surveyor competent to run the true meridian by this kind of astronomical observation?

A. Not ordinarily.

96th Q. What class of men are required for that work?

A. Usually the highest class of engineers, especially equipped for that kind of work. Few civil engineers know anything about astronomical observations.

97th Q. Have they usually the instrument needed to carry on that work?

A. No, sir, not the refined astronomical work.

(Noon recess).

2745 2 O'CLOCK P. M., *July* 23, 1906.

J. K. MONROE'S examination resumed by Mr. PRICE:

98th Q. Beginning at the Fairfax stone in running your reference line, did you cross the Potomas river at any point?

A. Yes, sir; at the end of two hundred and forty poles, or I believe at the end of two hundred and forty-two poles, to be exact.

99th Q. Get it accurate.

A. (Referring to memorandum.) Two hundred and forty-two poles.

100th Q. After crossing the river, what evidence on the ground did you find of the existence of a previous line along there?

A. I found some line trees marked fore and aft, and also passed by a planted stone marked "B. 1101."

101st Q. Where was that stone?

A. At three hundred and fourteen and eight-tenths, we passed six tenths poles west from that stone.

102nd Q. How is that point designated on your map No. 1?

A. Designated on the map by the red letter and figure "A1."

103rd Q. What distance is that stone from the Fairfax stone?

A. Three hundred and fourteen and eight-hundredths poles.

104th Q. How near is that to being one mile?

A. It lacks about six rods of a mile.

105th Q. Those measurements were made recently?

A. Yes, sir.

106th Q. If the original Deakins line in 1789 was measured by surface measurement, would there likely be some discrepancy between your line and that?

Exception to the question, by counsel for the State of Maryland, because it assumes that the Deakins line was run.

A. It would doubtless be shorter.

2746 107th Q. I call your attention to this description of the Maryland Military Lot No. 1101, as follows: "Beginning at a bounded maple marked 1100 standing one mile north from stone fixed by Lord Fairfax for the head of North Branch of Potomac river, and running north eighty-nine and one-half perches east eighty-nine and one half perches south eighty-nine and one half perches, then by a straight line to the beginning, containing fifty acres", and I will ask you whether at or near this stone which you have spoken of, you found any evidence of a maple tree?

A. We found the trunk of a maple tree lying from this stone.

108th Q. Could you tell whether it was marked or not?

A. No, sir; too much decayed.

109th Q. Was this stone and maple pointed out to *by* you by any one as the corner of any tract or piece of land?

A. I do not recall that it was just at this time. I am not sure about that. I have no note of it. I had these papers, however, in my possession, looking for those points.

110th Q. What tract of land lies west of that point where this stone and maple were found?

A. A small tract of land taken up by John Hoye, I believe, seventy two acres.

(By Mr. SINCELL:)

111th Q. Did you locate that tract by actual survey?

A. I located the beginning corner of it.

Mr. SINCELL: Evidence of the location of this tract is excepted to, unless it is shown that the witness located it on the ground by actual survey.

(By Mr. PRICE:)

112th Q. Look at the paper now handed you, purporting to be a copy of patent from the Commonwealth of Virginia to John Hoye, dated December 31st, 1844, and filed as Exhibit N. No. 12, with the answer of the defendant in this cause, and state
2747 whether you have laid down that patent on your map No. 1.

A. I have.

113th Q. How did you locate it?

A. I do not know as I understand your question.

114th Q. You laid it down on your map. How did you do it?

A. It is laid down by protraction.

115th Q. Why did you lay it down as you did on the map?

A. The description fitted the grant and adjoining tracts.

Exception to the answer, by counsel for the State of Maryland.

116th Q. If the stone and the maple which you have mentioned constituted the corner of Military Lot 1101 on the Deakins line, would the eastern boundary of that lot 1101 correspond with the Michler line at that point?

Exception to the question, by counsel for the State of Maryland, on the ground that it assumes that the location mentioned is the location of lot No. 1101, and there is no evidence of such location.

A. No, sir.

117th Q. Where is the Michler line with reference to that stone and maple?

A. West of the stone and maple.

118th Q. How far?

A. Four rods perhaps.

119th Q. Have you ever seen the map prepared by Frances

Deakins of the Military lots laid out by him under the authority of the State of Maryland west of Fort Cumberland in 1789?

A. I was shown a map in the Maryland land office by the commissioner of the office as the original Deakins map.

120th Q. Did you make a tracing of so much of that map
2748 as lies along the Maryland line?

A. I did.

121st Q. Look at the map now shown you marked "Monroe Exhibit No. 1", and state what it is?

A. That is a tracing of that portion of the map adjoining the western boundary line of Maryland, as shown to me by the commissioner?

122nd Q. Is it the tracing made by you?

A. Yes, sir.

123rd Q. I call your attention to said map, and ask you what is the number of the first of the Military lots going north from the Fairfax stone shown on that map.

A. 1101.

124th Q. What distance from the Fairfax stone?

A. One mile.

125th Q. Have you located that lot 1101 on your map No. 1?

A. Yes, sir.

126th Q. How does it correspond in location on your map with the location appearing on this tracing of the Deakins map?

A. It is located at the end of three hundred and fourteen poles on our line, instead of three hundred and twenty on his.

127th Q. Is there another lot appearing on the Deakins map just north of that?

A. There is.

128th Q. What is it?

A. 1102.

129th Q. And you have on your map a lot of the same number lying north of the lot 1101 also, have you?

A. Yes, sir.

130th Q. Now, in locating the Hoye seventy-two acres,
2749 where did you locate it with reference to the location of those military lots?

A. Just west of them and adjoining.

131st Q. Going north from the stone and maple trunk, what was the next evidence you encountered of an ancient line along there?

A. At five hundred and fifteen poles I passed one and eight-eight hundredths rods to the left or west of a very large and anciently marked hemlock tree.

Objected to by counsel for the State of Maryland, because the hemlock is not located on the plat.

132nd Q. How far is that above the stone marked "B. 1101"? How far north of that stone was this hemlock?

A. About two hundred poles north of it.

133rd Q. Will you please locate that hemlock upon the plat and designate it by a red letter?

A. It is marked red letter A and figure 2.

134th Q. How was that hemlock marked?

A. Fore and aft.

135th Q. What do you mean by that?

A. North and south sides.

136th Q. Going on north, what was the next evidence you found of an ancient line?

A. At seven hundred and forty-four poles, I passed four tenths of a pole west of a large hemlock anciently marked fore and aft.

Excepted to because it is not located upon the plat.

137th Q. Will you please indicate on the map the point where that hemlock stood, and designate it by a letter.

A. That point is designated on the map by red leter A, figure 3.

138th Q. How was that hemlock marked?

2750 A. Fore and aft, north and south side?

139th Q. Did the mark on this hemlock and the one last spoken about designated as red letter A2, appear to be ancient or recent?

A. Ancient.

140th Q. Did you come across any of the monuments planted on the Michler line in that locality?

A. At the end of nine hundred and nine and thirty five hundredths poles, we passed twelve and seven tenths poles east of a large stone monument on the summit of Backbone mountain, supposed to be placed by Lieutenant Michler—supposed to be on the Michler line.

141st Q. Why do you suppose it?

A. It is a larger and a better finished monument than usually marks property lines. There was no inscription on it.

142nd Q. Was it pointed out on the ground as the Michler monument?

A. I suppose it was, but I do not recall who pointed it out. It was recognized in that country.

143rd Q. In the survey made by Mr. Brown in this case, how was that monument treated?

A. As the Michler monument.

144th Q. Is it represented on Mr. Brown's map filed in this cause?

A. I think it is.

145th Q. Is it represented on that map?

A. It is represented on my map by a small square with the words "monument No. 1" opposite it.

146th Q. How is it designated on the map of Mr. Brown?

A. I will have to get that map and see. (Witness examines map). This point is designated on the map made by Mr. Brown in

2751 this case by the words "Backbone station," and the letters "XB," and a small circle.

147th Q. Passing on north along the line run by you, what was the next point indicated on the ground?

A. At one thousand, one hundred and seven and two tenths, we passed one and four tenths poles west of a large chestnut oak marked as a corner, stone pile and pointers.

148th Q. Will you designate that point on the map, and mark it with a red letter?

A. This point is designated on map No. 1 by the figures "1107.2," and a red letter "A" figure "4."

149th Q. Have you made any survey of a tract of land adjacent to that large chestnut oak of which you have just spoken?

A. Yes, sir.

150th Q. What tract?

A. A tract of land called the Wilson, Morris & Byrne tract, now owned by the Loar heirs.

— Q. Look at the paper now handed you, being defendant exhibit "N. No. 14" filed with the answer in this case, and state what it is.

A A copy of the patent of A. C. Wilson, John Byrne and R. Morris for six hundred acres of land, dated the first of February, 1854.

151st Q. I notice on map No. 1, you have the words "Wilson, Byrne & Morris." Does that designate a tract of land?

A. It does.

152nd Q. What tract?

A. The tract just mentioned, Wilson, Byrne & Morris.

153rd Q. Does it adjoin the Maryland line?

A. It does.

154th Q. What is the call in that patent for the Maryland line?

2752 A. The calls are, Beginning at pointers on the Maryland line, corner of John Hoye seventy two acres, with the lines of the same and the lines of the Hillary Griffin survey and the Deakin survey of two thousand acres, thence to the Maryland line, and with it to the place of beginning.

155th Q. What is the last call for the Maryland line?

A. East one hundred and twenty-five poles to the Maryland line, and with the same south five hundred and fourteen poles to the beginning.

156th Q. The beginning of that patent calls for the corner of the John Hoye survey of seventy-two acres. Where is that point designated on your map? Please indicate it with a letter.

A. That point is indicated by red letter A, figure 5.

157th Q. What is the other point where the line strikes the Maryland line? How is it designated?

A. Indicated by the red letter A figure 4.

158th Q. Is that point A4 the corner of any other tract of land which you located?

A. It is a corner of the Stalnaker tract.

159th Q. How did you locate it as a corner of the Stalnaker tract?

A. The Stalnaker tract lies directly north of the Loar tract, adjoins it.

160th Q. Directly north of what tract?

A. The Loar—Wilson, Byrne and Morris tract rather.

161st Q. Why do you speak of that as the Loar tract?

A. Because it is now owned by the Loar heirs.

162nd Q. Passing on north, did you find any other marked trees near there, on or near the line you were running.

A. At eleven hundred and eighty nine and eight tenths
2753 poles we passed two and one tenth poles to the left of a hemlock marked on the north and south sides.

163rd Q. Will you designate that point on the map by a letter?

A. This point is designated on map No. 1, by red letter A, figure 6.

164th Q. What was the next point you found going north on that line indicating a line?

A. At twelve hundred and one and six tenths, we passed one and sixty five hundredths poles to the left of a dead hemlock marked on the north and south side.

(By Mr. SINCELL:)

165th Q. Passed to the west of the hemlock?

A. Yes, sir. This point is designated on the map by red letter A, figure 7.

(By Mr. PRICE:)

166th Q. How was that hemlock marked?

A. On the north and south sides.

167th Q. Then what was the next object you found on the ground that indicated a line?

A. At twelve hundred and fifty one and six tenths poles passed two tenths of a pole to the left of an old chestnut. It was marked as a side line tree—marked on the west side.

168th Q. Designate that point on the map?

A. It is designated on the map by red letter A, figure 8.

169th Q. What is the next point that indicated a line you found?

A. At twelve hundred and eighty four and six tenths poles, passed eighty-five hundredths west of a stake and pointers.

170th Q. How near is that to being four miles from the Fairfax stone?

A. The fourth mile would be at twelve hundred and
2754 eighty rods. It is four and six tenths beyond that point.

171st Q. How is that point designated on your map?

A. It is designated on the map by the red letter B, figure 1.

172nd Q. Have you indicated on your map the mile points from the Fairfax stone?

A. I have.

173rd Q. How is the four mile point designated on that map?

A. By the figure "4," and the Letter "M" in black, and a small circle.

174th Q. Have you indicated on your plat a tract of land granted by the state of Maryland under the name of "Mount Pleasant"?

A. I have.

175th Q. How did you locate it where you have?

A. It is located by the beginning corner as shown by Mr. Daniel Gnegy.

176th Q. Where does Mr. Gnegy live?

A. He lives on land adjoining this.

177th Q. This is one of his property corners? Did he point out to you his own boundary line?

A. I think he did. I will see (Examines memorandum).

178th Q. Is this beginning point of "Mount Pleasant" the beginning corner of the Gnegy land as pointed out?

A. Yes, sir, as he pointed it out.

179th Q. How is this beginning corner of Mount Pleasant designated on your map?

A. By red letter B, figure 2.

180th Q. Is this point indicated on the map made by Mr. Brown in this case?

A. I think not.

2755 181st Q. I call your attention to the language of the description of Mount Pleasant as contained in the original patent to Baker Johnson from the State of Maryland dated May 22nd, 1787, as follows: "Beginning at a bounded white oak standing on the north line drawn from the fountain head of the North Branch of the Potomac river and near the west side of the road leading from Archie's spring Glade to Tyger's Valley, and running thence south," etc. Who did you say pointed out to you this beginning corner of Mount Pleasant?

A. I believe it was Daniel Gnegy, but I am not positive. I was also there with Mr. Brown when he had it pointed out to him.

182nd Q. Who pointed it out to him?

A. I cannot recall that either.

183rd Q. Where is this point with reference to the line run by you?

A. This point stands south thirty two west forty nine and two tenths poles from the end of eighteen hundred and nine poles on the reference line.

184th Q. Going on further north, did you locate a Pettyjohn survey of three hundred and thirty acres on the map?

A. Yes, sir.

185th Q. What did you find, if anything, representing the state line along in that locality?

A. I located the tract marked "John Pettyjohn 330" by running out the line as shown by John Slaughbaugh, beginning at sugar pointers standing at the point where the original cherry stood called for in John Pettyjohn's patent.

186th Q. Was this point shown to you by anybody?

A. Shown to me by John Slaughbaugh who stated that he remembered the original cherry stump that stood there.

2756 187th Q. Where does he live?

A. He lived on this tract of land at that time. I think he is dead now.

188th Q. Can you designate that point on your map?

A. Yes, sir; that point is designated on the map by red letter B, figure 3.

189th Q. Was there any fence along there?

A. I think there was; yes, sir.

Exception by counsel for the State of Maryland. to the question and answer, on the ground that no fence is located on the plat.

190th Q. Any representation made as to that fence?

A. Not that I recall now. He showed me that point as his property corner. I ran the line from that point north forty five east seventy four and one half poles to two maple pointers, one on each side of the fence, one hundred and four poles on the line extended to a white oak stake standing south six degrees east one and four one hundredths poles to a point between two large white oaks marked as pointers for Slaughbaugh's corner, another white oak having been cut down previously.

191st Q. Will you designate that point on your map?

A. That point is designated on the map by red letter B, figure 4.

192nd Q. How were the two surveys to John Pettyjohn, one for three hundred and thirty acres and one for four hundred acres laid down on your map?

A. The one for three hundred and thirty acres is laid down from surveys made as above mentioned, and the one for four hundred acres is laid down by protraction.

193rd Q. Going on northward, did Mr. Lloyd Dawson point
2757 out to you any objects on the ground?

A. I believe he pointed out to me his corner, and that of Mr. Offutt, who adjoins him on the north. This is a point in the Yough river at the mouth of a small drain flowing in from the west.

194th Q. What corner was that?

A. That was his northeast corner, and the south-east corner of Mr. Offutt's land?

195th Q. Was that point designated on your map?

A. That point is designated on the map by red letter C, figure 2.

196th Q. Now, did Mr. Dawson point out a fence along there?

Excepted to by counsel for the State of Maryland, because there is no fence on the plat located.

A. I do not recall that any one pointed out a fence.

197th Q. Was there a fence there?

A. I think not just at that point.

198th Q. Was the fence in the line of that point north and south?

A. There was a fence through the bottom land north of that at least a part of the way.

199th Q. On the Dawson land as pointed out?

A. No; I think it was on the Offutt land.

200th Q. Did you pass through the property of Beckman & Silas Fike and William Weimer?

A. I passed just east of their property.

201st Q. Was there any fence indicating the eastern boundaries of their property?

Excepted to by counsel for the State of Maryland, because there is no fence located on the plat.

A. I think there is, but I am not sure about that. There is a

fence along the eastern boundary of the Slaughbaugh tract
2758 I recall.

202nd Q. Where was the next Michler monument that you passed?

A. At the end of two thousand, seven hundred and twenty and eighty-five hundredths poles, we passed thirty-five and twenty-five hundredths poles east of a large monument standing on the Northwestern pike, said to be in the Michler line.

203rd Q. What pike is that?

A. A pike leading from—it is called the Northwestern pike.

204th Q. How is the monument designated on your map?

A. By the words "Monument No. 2" and a small square.

205th Q. Was there any other stone on the Northwestern pike in that neighborhood?

A. At the end of twenty-seven hundred and fourteen poles, we passed twenty-five poles east of a small stone planted near the edge of the pike.

206th Q. How did this point correspond with the corner of the Offutt land as pointed out to you by Dawson?

A. Seemed to be in the same line, a fence leading through the bottom land between that point and the other.

207th Q. Was there a fence along any part of the Western boundary of the Offutt land, known as the Chisholm mill property?

A. A fence along a part of the eastern boundary; through the bottom land I noticed a fence.

208th Q. How does that fence correspond with that stone?

A. It appears to be in the same line as the stone.

209th Q. As the small stone or the Michler stone?

A. The small stone, east of the Michler stone.

Q. Was that small stone on the pike pointed out to you
2759 by anybody as the corner of any tract of land?

A. I believe it was, but I do not recall by whom. It seems to me that Mr. Whetzell told me that that stone was in the east line of Mr. Offutt's land—I am pretty positive.

210th Q. Who is he?

A. He was a tenant of Mr. Offutt's at that time.

211th Q. Did he live on that land?

A. Yes, sir.

212th Q. Was it Simon D. Whetzell?

A. Yes, sir.

213th Q. Do you know what original tract covers the Offutt lands there?

A. As I understand, it is a part of the John T. Goff land.

214th Q. I notice you have laid down on your map three tracts of land patented to John P. Goff, one of a thousand acres, one of eight hundred and sixty-eight acres, and one of five hundred acres. I will ask you to file the copies of the original patents for those tracts of land, and mark them Monroe Exhibits Nos. 2, 3 and 4. Did you find on the ground any of the original corners or lines of those patents?

A. No, sir. Now, just wait a moment. I am not sure about that. (Examines memorandum book.)

215th Q. Those patents call to run with the Maryland line. Why did you locate them as you have on your map?

A. In the description of these lands, they call to adjoin the Maryland line and each other north and south, and for that reason they are located in that position on the map.

2760 216th Q. Did any of the people along where those tracts are located point out to you where the Maryland line was as claimed by them?

A. My recollection is that Mr. Peter F. Nine pointed out to me a sugar tree which he stated stood in the old Maryland line. This point is designated on the map by red letter C, figure 3.

217th Q. You have located several military lots, three hundred and sixteen, three hundred and seventeen and three hundred and eighteen. How did you locate those?

A. I ran a reference line from a pine stump on the west bank of Yough river pointed out to me as a corner of the William Ashby three hundred acre tract by John R. Bowman—I guess his name is—Shall I give the calls?

218th Q. Well, explain it.

A. North forty eight degrees east forty five and one half poles, then east at one hundred and seventy two poles passed one and six tenths poles north of the bounded sugar above mentioned, said to be north west corner of a tract called "Eelshine."

219th Q. You say Peter F. Nine pointed that out to you?

A. That is my recollection. At one hundred and ninety-six and one tenth poles we crossed our reference line at the end of three thousand two hundred and eighty and three tenths poles, north from the Fairfax stone. At two hundred and ten and five tenths poles to a stake among several bounded pines, thought to be the corner of "Buckdale" and Peter F. Nine's military lot No. three hundred and eighteen, and a fifty acre tract patented to William Ashby. I afterward talked with Mr. Nine about this point, and I described its locality, and he stated to me that as he understood it, this point

2761 was a corner of his military lot.

Exception by counsel for the State of Maryland to the answer, because Nine did not go upon the ground and point out the corner to the witness, and because Military lot three hundred and eighteen was not located according to the original certificate of award therefor.

220th Q. Have you laid down on your map the Maryland patent called the "Royal Charlotte"?

A. I have; yes, sir.

221st Q. Is that tract laid down on Mr. Brown's map in this case?

A. Yes, sir.

222nd Q. With reference to the location of that tract of the Royal Charlotte, have you laid down military lots, three hundred and sixteen, three hundred and seventeen and three hundred and eighteen?

A. Adjoining on the northern or north-western side.

223rd Q. And how has Mr. Brown laid them down on his map?

A. In the same manner.

224th Q. And with reference to the Michler line, how does your location of the "Royal Charlotte" compare with the location of that tract by Mr. Brown?

A. Substantially the same.

225th Q. I read you the description of military lot number three hundred and sixteen: "Beginning at the end of one hundred and twenty two perches on the third and last line of a tract of land called the Royal Charlotte, and running with said third line south twenty-six degrees west two hundred and two perches and north one hundred and eighty perches, then by a straight line to the beginning, containing fifty acres," and I will ask you whether your location of that lots agrees with the description which I have just

2762 read?

A. It does.

226th Q. Then the description of lot No. three hundred and seventeen is as follows: "Beginning at the beginning of lot number three hundred and sixteen, and running with the third line of the Royal Charlotte reversed north twenty six east eighty perches, west one hundred and twenty two perches, south seventy perches, then by a straight line to the beginning, containing fifty acres." I will ask you if your location of that lot corresponds with and conforms to the description I have just read.

A. It does.

227th Q. And does Mr. Brown's correspond and conform in the same way, as shown by his map?

A. It does; yes, sir.

228th Q. Then I read you the description of lot number three hundred and eighteen "Beginning at the end of the first line of lot three hundred and seventeen, and running north twenty six degrees east forty two perches to the end of the second line of the Royal Charlotte, then with the second line reversed south sixty-four degrees east twenty perches to the end of the fourth line of "Small Meadows," and with it reversed north seven degrees east twenty seven perches, then north eighty degrees west sixty five perches, south seven degrees west thirteen perches, west ninety six perches, south fifty perches, then by a straight line to the beginning, containing fifty acres." I will ask you how your location on the map conforms with that description.

A. That conforms to that description.

229th Q. And is that also true of Mr. Brown's?

2763 A. Yes, sir; it appears to be from his map.

230th Q. I now hand you a paper, being a certified copy of the Maryland patent for the tract called "Eelshine," dated the 28th day of February, 1854, and ask you to file the same as part of your deposition, marked "Monroe Ex. No. 5."

A. I hereby file the same, so marked.

231st Q. I call your attention to the following language of the description of said tract of land called "Eelshine." "Beginning at the end of the first line of lot number three hundred and sixteen, and running thence south twenty six degrees west ninety perches to the

Virginia and Maryland line, then with said line north three hundred and eighty four perches to a bounded sugar tree then east thirty eight perches south one hundred and eighty four perches south sixty four degrees west ten perches, south twenty one degrees east twenty perches, south five degrees west thirty eight perches, south seventy four perches to the beginning." I will ask you how that description conforms to the location of that tract, as you have it on your map, as compared with the military lot referred to?

A. It conforms to that description on the map?

232nd Q. How have you located the Goff tracts of five hundred acres and eight hundred and sixty eight acres in relation to said tract "Eelshine"?

A. Located it adjoining and on the west.

233rd Q. So that if the Eelshine correctly calls for the Maryland line on the one side, and they call for it on the other, you have made a common line between them, have you?

A. Yes, sir.

2764 234th Q. If then the Royal Charlotte is correctly located and the military lots three hundred and sixteen, three hundred and seventeen, and three hundred and eighteen, and the Eelshine tract, and the latter tract is on the Maryland line, then, what have you to say as to the Goff five hundred acre tract, eight hundred and sixty eight acre tract and one thousand acre tract?

A. They would also bound on the Maryland line.

235th Q. Those three Goff tracts call for each other along that line, do they not?

A. They do.

236th Q. What about the Pettyjohn tracts lying south of the Goffs?

A. The Goff tracts rather call for the Pettyjohn.

237th Q. A common corner along the Maryland line?

A. Yes, sir, and the Pettyjohn being the senior title, the Goffs are laid to that.

238th Q. I hand you a paper, being a copy of a patent by the commonwealth of Virginia to Zerah Osborne for six hundred and sixty acres, and ask you to file te same with your deposition.

A. I will file the same marked "Monroe Ex. No. 6."

239th Q. Have you located that Zarah Osburne tract on your map?

A. I have.

240th Q. How is it designated?

A. It is designated by the words "Zarah Osborne."

241st Q. These original tracts are shown on your map No. 2, are they not?

A. Yes, sir; shown on map No. 2 marked "Zarah Osborne 660." It will be on that.

242nd Q. As well as your map No. 1——

(By Mr. SINCELL:)

Q. Did you locate that by actual survey?

2765 A. It is located by the Slaughbaugh papers?

Objection by the counsel for the State of Maryland to any evidence as to the location of the Zarah Osborne six hundred and sixty-acre tract, because it was not located on the ground by the witness.

243rd Q. This Zarah Osborne patent calls to begin at pointers in the Maryland line, corner to John Pettyjohn and running with the Maryland line due south two hundred and eighty two poles to a maple. Does your location of that tract on the map conform to that common corner with the Pettyjohn?

A. It does.

Exception to the answer by counsel for the State of Maryland.

244th Q. And if the Pettyjohn surveys and the Goffs and the Eelshine and the Royal Charlotte and the three military lots three hundred and sixteen, three hundred and seventeen and three hundred and eighteen are correctly located, what would you say with reference to this Zarah Osborne tract?

A. I should say it was also correctly located on the map.

Exception by counsel for the State of Maryland.

245th Q. Have you located on your map a Maryland patent called "Buckdale" granted Jesse J. Ashby, and dated the twenty-first day of March, 1867?

A. I have.

246th Q. I hand you the certified copy of said patent, and ask you to file the same with your deposition?

A. I file the same as "Monroe Ex. No. 7."

247th Q. The description contained in said patent for "Buckdale," reads, "Beginning for the outlines of the whole at the original beginning of lot number three hundred and nineteen, it being
2766 the end of the third line of lot number three hundred and eighteen." Will you designate that point on your map?

(By Mr. SINCELL:)

248th Q. Did you locate that point by actual survey?

A. No.

Objection by counsel for the State of Maryland to the evidence of the witness as to the beginning of lot number three hundred and nineteen, because it was not located on the ground.

The WITNESS: This point is designated on map No. 1 by red letter "C", figure "4".

249th Q. I will ask you if, taking that as the beginning point your location of the Buckdale on your map conforms to the description in the patent which I have shown you?

Exception by counsel for the State of Maryland.

A. It does.

250th Q. Going on northward, what tracts on the Virginia side did you locate?

A. I located the tract marked "William Ashby 300."

251st Q. Is that William Ashby three hundred acre tract also located on Mr. Brown's map?

A. It is.

252nd Q. With reference to the location of the Michler line, how does his location correspond with yours?

A. It is substantially the same.

253rd Q. I hand you certified copy of the patent to William Ashby for three hundred acres, and ask you to file same with your deposition?

A. I will do so, marked "Monroe Ex. No. 8."

254th Q. This calls to begin at a Cherry tree on the west
2767 side of main branch of the Youghiogheny river, adjoining the Maryland line. Did you find that point?

A. I went to a point, I think, shown me by Michael Shafer as the beginning point of the three hundred acre tract, where a wild cherry tree had stood. It is now washed away. This point is now about the middle of the river, as I recollect it. I ran some of the calls of this tract of land. The point is substantially the same point Mr. Brown ran some lines from in his surveying.

255th Q. Who pointed it out to Mr. Brown?

Mr. BROWN: I think it was Parker Ashby. That is my recollection.

Mr. SINCELL: It was Parker Ashby.

The WITNESS: It was substantially the same point pointed out to Mr. W. McCulloh Brown in this cause by Parker Ashby.

256th Q. How is that point designated on your map?

A. Designated by red letter C, figure 5.

257th Q. The next tracts I see north of the William Ashby three hundred indicated on your map are the John Hoye tract of five hundred acres and the "Maryland" tract of one hundred and thirty and one fourth acres. How did you locate those tracts on your map?

Mr. SINCELL: Did you locate them by actual survey on the ground?

A. I ran some of the lines out, did not run them all. The tract "Maryland" was located on the map by a partial survey from a point shown me, I believe, by Michael Shafer, which point is the end of the fourth line of the tract Maryland and the beginning corner of the William Ashby three hundred acre tract. I ran the fifth line by its calls, of the tract Maryland, and the balance is laid down
2768 by protraction.

258th Q. I hand you a certified copy of a Virginia patent to John Hoye for five hundred acres, and ask you to file the same with your deposition.

A. I file the copy marked "Monroe Ex. No. 9."

259th Q. This five hundred acre survey calls to begin at a hickory, two red oaks and an ash standing at the end of the first line of William Ashby's survey of three hundred acres, and running with the second and third lines thereof south fifty one west one hundred and twelve poles to a chestnut and two hickories, etc. I will ask you to look at the description contained in this patent, and state whether your location of that tract on your map corresponds with that description, so far as the adjacent lands are concerned?

A. It does.

260th Q. If, then, the William Ashby three hundred acres is correctly located by yourself and Mr. Brown, is the John Hoye five hundred acres properly located on your map?

A. It is.

261st Q. In the description of this John Hoye five hundred acres, it calls to run north eighty eight and one half east twelve poles to the Maryland line, and with it south one hundred and ninety eight poles to a stake in a line of William Ashby's survey of three hundred acres. How is the point on the Maryland line there called for designated in your map?

A. By red letter C, figure 6.

262nd Q. In that locality, did you locate any tree on the ground, a corner tree?

2769 A. At the end of three thousand, seven hundred and fifty and eight tenths poles, I ran a reference line south seventy five west six and six tenths poles to a large chestnut stump. The reference line on the map is a little bit out of place. The paper must have shifted a little bit on the original map. It is now marked by a stake and stone pile, and supposed to be the original corner of the Hoye five hundred acre tract and the William Ashby two hundred acre tract, and also a corner of the Hooker tract. This point is indicated on the map by red letter "C1."

263d Q. Is that point designated on the map of Mr. Brown in this case?

A. It is.

264th Q. How?

A. It is represented on Mr. Brown- map by black letter "Q."

265th Q. Look at the map filed with the deposition of H. J. Freer, taken today in this cause, marked "Freer Ex. No. 1," and state whether that point which is designated on your map as "C1" and on Mr. Brown's map by the black letter "Q," and state whether that point is indicated on the said map filed with the deposition of Mr. Freer.

A. It is, by the letter and figure "C1."

266th Q. I hand you a certified copy of the William Ashby survey of two hundred acres granted by the Commonwealth of Virginia February 2nd, 1787, and ask you to file the same with your deposition.

A. I will, marked "Monroe Ex. No. 10."

267th Q. You have stated that the adjacent corner indicated on your map by the red letter C1, is the beginning corner of the Ashby two hundred acres, or supposed to be. I will ask you to state

2770 what is called for as the beginning corner of that survey.

A. A chestnut is called for as the beginning corner of the survey, and I subsequently ran the lines on that tract from that stump as the beginning corner.

268th Q. Is that tract located then upon your map correctly from the beginning corner, as you ran it on the ground?

A. It is.

269th Q. Did you find any Michler monument in that neighborhood? *Ans.* At the end of three thousand seven hundred and

seventy two and sixth tenths poles passed 47.35 poles east of a stone pile and stake on Lauer's Hill, supposed to be in the Michler line?

A. Yes.

270th Q. How is that indicated on the map?

A. That is indicated on the map by the word "Stake," and "Lauer Hill," and a small square opposite the figure "3772.6."

271st Q. Have you laid down on your map the reference line which you ran?

A. I have.

272nd Q. How is it indicated?

A. It is indicated by a line of dashes.

273rd Q. How are the stations and points in the line indicated?

A. The miles on the line are indicated by the numerals, "1 M.," 2 M., 3 M., 4 M., etc., opposite small circles, and the reference points by figures representing the distance from Fairfax stone.

274th Q. Any points that are designated on that map are indicated by small circles, or how?

A. Usually by small circles.

275th Q. The points in the Michler line are indicated by squares?

A. By small squares.

276th Q. I notice further south on the line represented as
2771 the Michler line, the words, "Stake, Stahl's Hill." What is that intended to represent, opposite the Eelshine tract?

A. That represents a point shown to us as a point in the Michler line, which point is thirty nine and ninety three hundredths poles west of a reference stake standing at the end of three thousand one hundred and thirty and fifteen hundredths poles from the Fairfax stone.

The further taking of these depositions is adjourned until tomorrow, at the same place, and between the same hours.

TUESDAY, *July 24th*, 1906.

J. K. MONROE's examination resumed by Mr. PRICE:

277th Q. Going northward from the point to which attention was directed last, in the neighborhood of a stake on Lauer's Hill in the Michler line, did you run any farther reference lines along there, any farther northward?

A. At the end of three thousand nine hundred and twenty poles I ran south seventy nine and one half west eight and three tenths poles to the northeast corner of Benjamin Miller's house.

278th Q. How is that point represented on your map No. 1?

A. The point is represented by the word "Miller," and a square dot.

Objection to any evidence as to the running of that line, because it is not located on the plat.

279th Q. Is that point marked "Miller" on the plat correctly located as Miller's house was located by you with reference to your reference line?

A. Yes, sir.

280th Q. I notice opposite the tract marked "Miller" there
2772 are three lots eastward numbered three hundred and forty two, three hundred and forty three and three hundred and forty four, and south of that, three hundred and forty five. Now did you determine the location of those lots?

A. Those lots were not located on the ground. They were protracted?

Exception to evidence as to the location of the lots mentioned, as the witness states that the same were not located upon the ground.

281st Q. How does their location on this map correspond with the map made by Frances Deakins?

Exception to evidence as to location of lots on the map.

A. They are laid down on that map simply for illustration.

282nd Q. What further reference lines did you make?

A. At the end of forty six hundred and forty nine and seven tenths poles, I ran a reference line north sixty one east ten and seventy five one hundredths poles to a stone pile pointed out to me by Garrett White as his southeast corner, and stated by him to stand in the old state line.

283rd Q. How is that point designated on your map No. 1?

A. It is designated by red letter and figure "D1."

284th Q. Was there a fence pointed out to you by Garrett White along there on the eastern line?

Objected to, because the fence is not located on the plat.

A. I am not certain whether he pointed out a fence or not. There is a fence along there.

285th Q. Is there a fence there?

A. Yes, sir; there is a fence.

286th Q. How did that fence correspond with the stone pile?

2773 A. It agreed with it north and south.

Exception because the witness did not locate the fence.

287th Q. What other tract of land did you locate with reference to that corner?

A. I laid down on the plat a tract locally termed as the "Fredlock" tract, which has a common corner with this point as shown to me by Mr. White.

(By Mr. SINCELL:)

288th Q. Did he point that corner out to you as the corner of the Fredlock tract?

A. He said that was his corner, and the corner of the Fredlock, the Fredlock place—no one living there on it at the time.

(By Mr. PRICE:)

289th Q. From what did you lay down the Fredlock tract?

A. That tract was laid down from the description of a tract of

land which I copied from papers, I think in the hands of Wesley De Berry, a deed in the hands of Wesley De Berry.

Exception by counsel for the State of Maryland.

290th Q. Will you file a copy of the paper from which you copied that description with your deposition?

A. I will, marked "Monroe Ex. No. 11."

291st Q. What other points did you locate along there? Did you locate any houses?

A. I did. I located a house pointed out to me as the Fredlock house by the following lines, "Beginning at the end of fourteen and one half miles on our reference line ran south twenty one and three tenths poles, south eighty eight and one half west twenty seven and two tenths poles to the south east corner of said house. This house is indicated on the map by the word "Fredlock" and a small square dot.

2774 Exception to the answer because there is no reference line located on the plat.

The WITNESS: I also located Garrett White's house with the following reference line, Beginning at the end of forty seven hundred and sixty four poles on our reference line, I ran north sixty one and one half west twenty five and forty eight hundredths poles to the south east corner of said house. This house is indicated on the map by the words "G. White" and a small square dot.

Excepted to because there is no reference line located on the plat.

292nd Q. Going farther north, I see a representation of a railroad there. What railroad is that?

A. Baltimore & Ohio railroad.

293rd Q. What points, if any, did you locate on or near the Baltimore & Ohio railroad?

A. At the end of four thousand eight hundred and eighty nine poles and three tenths poles on our reference line, I ran north fifty four and forty seven west seventy and nine tenths poles to a stone monument standing on the south side of the B. & O. railroad, said to stand in the Michler line.

294th Q. How is that represented on your map?

A. That is represented by the word "Monument" and a small square on the line representing the Michler line on said map. The reference stake from which this was located is indicated on the map by a small circle with the figures "4889.3" opposite. At the end of four thousand nine hundred and eleven and four tenths poles, on our reference line, I ran south eighty seven east three and seventy five hundredths poles to the southwest corner of S. Freeland's house. This point is indicated on the map by the word "Freeland" and a small square dot.

2775 Excepted to because the reference line is not located.

295th Q. Was that Freeland house east or west of the reference line run by you?

A. East. From this same point I ran north fifty three degrees

and forty five minutes west twelve and twenty-eight hundredths poles to the northeast corner of E. W. Felton's house. This point is represented on the map by the word "Felton," and a small square dot.

Excepted to because there is no reference line located on the plat.

The WITNESS: At the end of forty nine hundred and nineteen and twenty four hundredths poles, I crossed the Baltimore & Ohio railroad.

296th Q. Before you left the Garrett T. White, were you pointed out his division line northward?

A. Yes, sir.

297th Q. Where is that indicated on your map?

A. At the end of forty eight hundred and seventy and five tenths poles, crossed the division line between De Berry and Mr. White, as pointed out by him—Wesley De Berry, I think it was; I am not sure; I think it was—about one pole east of a cherry tree marked as a center line. This point is indicated on the map by the red letter and figure "D2."

298th Q. What information did you have at that point as to the tract of land lying north of the land of Garrett White?

Excepted to as leading.

A. Mr. White stated that Mr. De Berry's land immediately adjoining him on the north was a part of a tract of land originally granted to John Bacorn by the State of Virginia.

299th Q. Going northward, did you find anything to in-
2776 dicate a corner on the Bacorn tract, and if so, what and where?

A. I did. Having the data in my posssession relative to the Bacorn tract, which described the eastern line of that tract as being six hundred poles long. At that distance north of the division line between said White and this tract, I set a reference stake, at the end of five thousand four hundred and seventy poles on our reference line, and ran from that south fifty two and three fourths east eight and eight tenths poles to a stone pile in a glade and thorn thicket, which had the appearance of having been built a great many years—was deeply covered with brush and leaves and entirely out of sight at first, which I took to represent the northern corner of the Bacorn tract. This point is indicated on the map by red letter and figure "D3."

Exception by counsel for the State of Maryland.

The WITNESS: I had further reason to believe that I should find a corner of this tract at this point, as I had in my possession title papers of William De Berry covering the land which was claimed to be a part of this survey and which recited certain calls indicating that the north east corner of this tract would be at this point.

300th Q. Will you file with your deposition, if you have it, a copy of the paper to which you refer?

Objected to by counsel for the State of Maryland.

A. I will. It is a deed from Eliza Holmes and others to James Brown, dated November 11th, 1875, and recorded in Book 43, page 279, of the records of Preston county. It is marked "Monroe Ex. No. 12."

301st Q. Did you then or at any time run any of the lines of the Bacorn tract?

2777 A. I subsequently ran the western line of this tract, but did not run the line from that point, from the point, from the stone pile westward.

302nd Q. As laid down on your map, does the Bacorn extend from the stone pile at the point D3 to the lands of Garrett White?

A. It does, and apparently overlaps it a little. This was protracted from the point at the stone pile D3. The error in the lines is shown on the map by the lap. The line on the ground is a continuous line, east line of that tract, Garrett White, while it appears from the map to be a little offset.

Exception by counsel for the State of Maryland to the question and answer.

303rd Q. What is the southern point of this Bacorn tract on its eastern side—that is, its south eastern corner Where is it on the map?

A. It lies perhaps six or eight rods east of the point designated on the map as D2.

Exception by counsel for the State of Maryland to that evidence of location, because it is too indefinite, and it does not appear upon the plat.

304th Q. Is it near the words "Snowey Glade?" Is it that part indicated on the map near the point marked "Snowey glade?"

Exception by counsel for the State of Maryland to the question on the ground that it is leading.

A. It is.

305th Q. Taking that eastern line of the Bacorn tract as you have located it, how does it compare with the eastern line of the White and Fredlock properties, as you located them?

2778 A. It is in the same line.

306th Q. Exactly?

A. Yes, as I stated before, that tract is laid down by protraction there, and it should be one and the same line. A little error in protraction shows on the map, whereas in fact, it is one straight line.

307th Q. Where is that eastern line of the Bacorn tract as laid down by you with reference to the house of George Freeland?

A. S. Freeland, isn't it? It is east of that house.

308th Q. How far east?

—. I did not measure it at that point. The fence along there is right close along by the house, the east side.

309th Q. Where is that fence? Where does it run?

A. It was at that time a fence extending at least a part of the way through the fields southward from that point, and northward along

that line as indicated on the map as far as the south east corner of the tract of land marked "Dennis Glover 100."

Objected to by counsel for the State of Maryland, because there is no fence located upon the plat, and it was not located upon the ground.

310th Q. There was a fence then, do I understand you, from Freeland's, and south of Freeland's extending northward as far as the point indicated by the Dennis Glover tract on the ground?

Objected to by counsel for the State of Maryland.

A. Yes, sir; at least a part of the way.

311th Q. How was that fence on the ground as compared with the line shown on your map as the eastern line of the Bacorn tract?

2779 Excepted to on the ground that the fence is not located upon the plat, now was it located upon the ground.

A. Substantially the same.

312th Q. How do you know that?

A. At the end of four thousand, nine hundred and forty seven and two tenths poles, I ran south seventy four and one fourth east six and four tenths poles to a board fence running north and south. At the end of five thousand and twenty one and four tenths poles I crossed a division fence between what was then called the Gates and Sharp land, and William De Berry land seven and six tenths poles west of a stone planted and at the intersection of a fence running north and south. That stone is marked "W. D."—standing at the intersection of a fence running east and west with a fence running north and south.

Objection to the answer unless the fence is located on the plat.

313th Q. Where is that point located on the map?

A. This point is indicated on the map by the red letter and figure D4. At the end of five thousand, two hundred and four and seven tenths poles, I ran north eighty five east seven and ninety five hundredths poles to a planted stone in a fence running north and south, which was pointed out to me by either Dennis Glover or William De Berry, I cannot recall which, as the south east corner of Dennis Glover's one hundred acre tract, and which was claimed to stand in the old state line. This point is indicated on the map by the red letter and figure "D5."

Exception to the answer because the fence is not located.

2780 314th Q. Where is the point to which you ran a reference line south seventy four and one fourth east six and four tenths poles to corner of a board fence, about which you have heretofore spoken?

A. This point is indicated on the map by red letter "D6."

315th Q. Did you locate any other house near or on the Baltimore & Ohio Railroad from there?

A. I did, at the end of four thousand, nine hundred and thirty

nine poles on our reference line I ran south eighty one and one half west seventeen poles to the south west corner of Smith's house. I do not know his first name—do not recollect it.

316th Q. Was it Isaac H. Smith, who was examined afterward as a witness in this case?

A. Yes, sir, he was examined as a witness afterward. I presume that is the man's name.

317th Q. How is that house indicated on the map?

A. This house is indicated on the map by the word "Smith," and the small square dot.

318th Q. How is it with reference to the Baltimore & Ohio Railroad?

A. North of the Baltimore & Ohio Railroad. I also located by triangulation William De Berry's house.

319th Q. Where is that indicated on the map and how?

A. By the word "De Berry," and a small square dot.

Q. Where is that with reference to the Oakland road?

A. North of the Oakland road.

Q. I see you have laid down on the map a tract indicated as "Dennis Glover 100." From what did you lay that down?

2781 A. I laid that down from the calls of a deed in the possession of Mr. Glover from the point on the map indicated by the red letter D figure 5, as shown on his south east corner by either Mr. Glover or Mr. De Berry. I cannot recall which.

320th Q. Will you file a copy of that deed with your deposition.

A. I will, marked "Monroe Ex. 13."

321st Q. I notice on your map a tract of land called "Kindness." What have you to say with reference to its location, and whether its location is correctly indicated on the map?

322nd A. This tract of land is laid down from the data on Mr. Brown's map, and from surveys made by him, and is substantially correct, except that it shows the lines of "Thomas & Ann" "The Promised Land" and the "Kindness" to have common lines, whereas, it is laid down on Mr. Brown's map as having a common corner at the point indicated on Mr. Brown's map at black "C," and which point is indicated on Map No. 1, as black "C," but showing on Mr. Brown's map a very narrow strip between the tract called "Thomas & Ann" and "Kindness," as well as between "Thomas & Ann" and the "Promised Land."

323rd Q. Did you run out these tracts on the ground?

A. I did not.

324th Q. Were you with Mr. Brown when he did any surveying with reference to these tracts?

A. I was.

325th Q. He gives an account of that surveying, does he, in his testimony and report?

A. Yes, sir.

Q. I read you the description of Military Lot number

2782 twelve hundred and thirty seven: Beginning at the end of three hundred and twenty seven perches on the third line of a tract of land called "Thomas & Ann," surveyed for Thomas

Johnson, Esq., and running south twenty eight degrees west two hundred and four perches, north one hundred and eighty two perches, then by a straight line to the beginning, containing fifty acres, and I will ask you whether you have laid down that lot number twelve hundred and thirty seven on your map No. 1?

A. I have.

326th Q. Where did you locate it with reference to the tract "Thomas & Ann"?

A. It is located substantially in conformity with that description, at the end of three hundred and twenty seven perches, on the third line. Well, I believe that the corner of that lot is held now a little farther southward on the line, as indicated by the fence. The location of lot number twelve hundred and thirty seven is substantially the same as that shown on Mr. Brown's map in this case.

327th Q. The lots twelve hundred and thirty eight, twelve hundred and thirty nine, twelve hundred and forty one, twelve hundred and forty three and twelve hundred and forty five, which appears on your map No. 1,—were they surveyed, any of them?

A. None of these lots were run. They were laid down by protraction from lot twelve hundred and thirty seven. Tie or reference lines were run to corners along our reference line which we supposed to be corners of these lots by their agreements with the distances as described in the calls of those lots.

2783 Excepted to because there are no tie lines located on the plat.

328th Q. Just give those lines that were run, and what you found there?

A. At the end of five thousand six hundred and seventy six poles on our reference line, I ran south seventy three, thirty five east six and eighty eight hundredths poles to a stake and stone pile, thought to be a corner of lots twelve hundred and thirty seven and twelve hundred and thirty eight. This point is indicated on the map by red letter and figure "D7." At the end of five thousand seven hundred and fifty four poles, I ran south seventy-two degrees east six and twenty four hundredths poles to a stake and stone pile thought to be a corner of military lots twelve hundred and thirty eight and twelve hundred and thirty nine. This point is indicated on the map by the red letter and figure D8.

329th Q. I hand you a copy of a patent from the Commonwealth of Virginia to Frances and William Deakins of six thousand acres, dated September 22nd, 1789, a copy of which is filed with the answer in this cause, and I will ask you whether you attempted to locate that patent, and if so, how?

A. I did. At the end of fifty four hundred and eighty eight and eight tenths poles on my reference line I ran south eighty eight and three fourths east seven and three tenths poles to a white oak believed to stand at the end of the forty-fifth line of the Deakins six thousand acre survey. This portion of the land was at this time owned
2784 by Major U. N. Orr, as well as one or two other lots indicated on the map by the words "U. N. Orr, 350." and "U. N. Orr 380." This point agrees substantially with the southern corner of

lot twelve hundred and thirty seven, as indicated on the ground by the surveys of Mr. Brown and myself, and as indicated on the map by red letter and figure "D9." This land was subsequently purchased by Parley De Berry, from Major U. N. Orr, and this point was pointed out to me by De Berry as his corner, and I subsequently ran from this point by the calls of the original Deakins patent south twenty eight west seventy poles to a stone pile at the corner of the fence claimed by De Berry as his corner, and as a corner of the Deakins six thousand acre tract. This point is indicated on the map by the red letter and figure D10. While running the reference line in this case at the end of fifty eight hundred and fifty four poles, I ran north seventy one and three fourths east five and one tenth poles to a white oak marked with the letter "H" on the east side, and also marked as a side line on the east side. This white oak I took to be the same tree called for in the deed of Major Orr from the Ward heirs, as a white oak corner or described as a white oak corner marked with the letter "H" standing on the old Maryland line.

330th Q. Indicate that on the map?

A. This point is indicated on the map by red letter and figure "D11."

Exception to the answer, by counsel for the State of Maryland.

330th Q. I show you a certified copy of a deed from the executors of Ulyssis Ward to Uriah N. Orr, dated April 28th, eighteen hundred and seventy-seven, and filed with the deposition of U. N. Orr heretofore taken in this cause as "Ex. No. 24," and I will ask you
2785 whether that is the deed you referred to in your last answer.

A. It is.

331st Q. What is the language of that deed with reference to the tree marked "H." Please read it.

A. That portion of the deed referring to this tree reads, "Thence east three hundred and ten poles to the original boundary line of the States of Maryland and Virginia, thence with said line north one and one fourth degrees east three hundred poles to a white oak marked "H" and pointers, thence west two hundred and fifty poles," etc. This deed describes the parcel marked "U. N. Orr 495" as laid down on the map.

332nd Q. I notice that in the description of the six thousand acres in the original patent, copy of which has been filed, there is a call as follows: "Thence north ten and one half east forty one poles to the sixth line of a tract of land called 'Thomas & Ann,' and with it reversed the four following courses: north seventy six west forty poles, north twelve and one half east two hundred and seventeen poles, north eighty two east one hundred and sixty nine poles, north twenty eight east seventy poles." Will you indicate on your map the point in the tract called "Thomas & Ann" called for in the above lines I have read.

A. This point is indicated on the map by red letter and figures "D12."

333rd Q. Where is the point at the end of the four courses I have just read, north twenty eight east seventy poles?

A. This point is indicated on the map by red letter and figure "D9."

334th Q. The next call in the patent is north six hundred and seventy five poles to Albert Gallatin survey. What line indicates that on your map?

2786 A. The end of that line is indicated by red letter and figure D13.

335th Q. The line then runs from what point to what point as indicated on your map?

A. From the point indicated on the map by the red letter and figure D9 to the red letter and figures D13.

336th Q. The next line reads: "And with it"—that is, with Albert Gallatin's survey "west five hundred and ninety poles to a tract of land patented in Maryland called 'Nonpariel.'" Will you indicate the end of that five hundred and ninety pole line on your map.

A. This point is indicated on the map by red letter and figures "D14."

337th Q. How does that correspond with the location of the "Nonpariel" tract, as you have indicated it on your map?

A. It compares with the description—that is, the Nonpariel tract is located on my map to conform to that description.

338th Q. The Nonpariel tract is also located on Mr. Brown's map, is it not?

A. It is.

339th Q. How does the location on your map compare with the location on Mr. Brown's map of that tract Nonpariel?

A. Substantially the same.

340th Q. Will you look at "Ex. No. 23," filed with the deposition of U. N. Orr in this cause, being a certified copy of a deed from the executors of Ulyssis Ward, deceased, to Uriah N. Orr, dated October 12th, 1872, and state whether that deed is represented on your map, and if so, in what way?

A. This tract of land is laid down on map No. 1 partially

2787 in broken and partially in solid lines, and with the words "U. N. Orr" and the figures "380" within said lines.

341st Q. Going northward from the Frances Deakins six thousand acre tract on the West Virginia side, what tract of land, did you lay down?

A. The next large tract of land is a tract marked "Honore Martin and John Hoye, 3600."

342nd Q. Did you run that out on the ground?

A. I did not.

Objection to the evidence on the location of this tract, because the witness states he did not run it out on the ground.

343rd Q. Why, then, have you placed it on your map in the manner in which you have?

A. It is placed on the map from information obtained from the surveyor's records of Monongalia county?

Exception.

The WITNESS: I herewith file a copy from the records of Monongalia county, marked "Monroe Ex. No. 14." The records state that there was conveyed from Honore Martin, assignee of J. Hoye—assignees of John Stockdale, on November 16th, 1800, thirty six hundred acres of land in Monongalia county, a part of which description in said survey reads as follows: South twelve hundred and eighty poles to intersect a line of a survey of Frances and William Deakins, and with it east three hundred and eighty poles to the Maryland line, and with it north fifteen hundred and fifty poles to intersect McCleary's line, and with it west one hundred and eighty eight poles to the beginning.

344th Q. Then in locating that tract where is the point indicated on your map at which the line ran south twelve hundred and
2788 eighty poles intersects the survey of Frances and William Deakins?

A. This point is indicated on the map by the red letter and figure "D15."

345th Q. And where is the point where the next line running east three hundred and eighty poles to the Maryland line ends?

A. This point is indicated on the map by the red letter and figures "D13."

346th Q. And where is the point where the next line run north fifteen hundred and fifty poles with the Maryland line to intersect McCleary's land terminates?

A. This point is indicated on the map by the red letter and figure "F1."

347th Q. I hand you a paper, being an attested copy of a deed from William Sigler, com'r for delinquent and forfeited land for Preston county, Virginia, to John Hoye, dated March 30th, 1837, and ask you to file the same with your deposition?

A. I will do so marked "Monroe Ex. No. 15."

348th Q. I hand you a paper, being a deed from John Hoye to Jacob Crane, dated the 15th day of August, 1846, and recorded in Book 7, page 288, and I will ask you what you know about that paper?

A. That paper was handed to me by A. J. Elliott, who stated that it was an original deed from John Hoye to Jacob Crane, and came into his possession while making various surveys connected with the William B. Crane estate.

349th Q. Can you file that deed as an exhibit with your deposition in this case?

Exception to the evidence of statement made by A. J. Elliott to the witness.

2789 A. I could not without permission from Mr. Elliott, as he requested me to return this paper.

350th Q. Is this the same deed, a copy of which is filed with the deposition of A. J. Elliott heretofore taken in this cause.

A. It is.

351st Q. Is that twelve hundred and forty seven acres of land,

which is conveyed by this last mentioned deed from John Hoye to Jacob Crane indicated on your map No. 1?

A. It is marked "John Hoye to Jacob Crane, 1247."

352nd Q. Why did you indicate it at the place where you have?

A. From this description in said deed this would be the proper place to locate this tract, as being a part of the thirty six hundred acres, and the Deakins six thousand acres.

(By Mr. SINCELL:)

353rd Q. Did you locate it by actual survey?

A. We did not run the lines of it, you know.

Objection to evidence of the location of this tract because the witness did not locate *to* upon the ground.

(By Mr. PRICE:)

354th Q. I notice a call in this deed, "south fifty three east two poles to a bounded chestnut on the south side of the Burchinal road, and on the Maryland line as run by Reuben Morris," will you indicate that point on your map?

A. This point is indicated on the map by red letter and figures "D 16."

355th Q. The call then is "With the Maryland line south two hundred and four poles to pointers on said line and to intersent a line run due east from the beginning of this deed." Will you indicate that point—the end of that two hundred and four pole line on your map.

2790 A. This point is indicated on the map by red letter and figures "D 17."

356th Q. Is the point which has been indicated on the map by the red letters D 17 intended to represent a corner of any other tract of land except the Hoye twelve hundred and forty seven acres?

Excepted to as leading.

A. It represents the northeast corner of the tract marked "U. N. Orr 200" on the map, which is described in certified copy of Ward's Executors to U. N. Orr, heretofore filed in this case as Ex. No. 24.

357th Q. Did you take any references to any objects along the line from the southern end of the thirty six hundred acre tract of Martin and Hoye to its northern boundary?

A. I did.

358th Q. Please give what you did?

A. At the end of the six thousand three hundred and ninety five and eighty-five one hundredths poles, on our reference line we passed seventy one poles east of a monument on Snaggy mountain supposed to stand on the Michler line. This point is indicated on the map by the words "Snaggy Monument," and a small square.

359th Q. What kind of a monument was that?

A. It was a stone monument consisting of two blocks of stone about four feet high, standing on a base level with the ground. From this same point I ran south eighty two east four and nine

tenths poles to a stone pile supposed to be a property corner. I have not any information as to whose. This point is indicated on the map by the red letter and figures "D 18."

360th Q. That is how near to the twenty mile stake?

A. It is about four poles south eastward from the stake
2791 marked twenty miles in our reference line. At the end of sixty six hundred and twenty two and five tenths poles on our line I ran south sixty six east five and twenty eight hundredths poles to a red oak tree marked on the north and south sides, supposed to be standing on the old Maryland line. This point is indicated on the map by the red letter and figures "E 1."

Exception to the supposition of the witness as to the tree standing on the old Maryland line.

(Noon recess.)

1:30 o'clock, p. m.

Examination of Julius K. Monroe resumed by Mr. Price:

361st Q. As I understand you point F 1 on your map is intended to represent the north east corner of the Martin and Hoye thirty six hundred acres? Is that correct?

A. Yes, sir.

362nd Q. Have you located the Maryland tract called "Diadem" on your map?

A. Yes, sir.

363rd Q. In what way are the Maryland grants distinguished on your map from the Virginia grants?

A. The lines inclosing the same are composed of a dash and dot for the Maryland.

364th Q. And how are the Virginia grants?

A. The Virginia grants are dotted and solid lines, solid lines to represent the original grants, and dotted lines to represent the subdivisions.

365th Q. Does the Martin & Hoye thirty six hundred acres adjoin the Diadem?

A. No, sir.

366th Q. What land lies between the two tracts?

A. The land of Marcellus Albright, J. C. Feather, Frazee
2792 and Michael Feather.

367th Q. Did you locate Michael Feather's house?

A. I did.

368th Q. How did you locate it?

A. I ran a reference line beginning at a chestnut northwest corner of Joseph C. Feather's two hundred and eighty acre tract as shown by him, and ran east one hundred and sixty three and eight tenths poles, thence north five west sixty three and seven tenths poles, thence north seventy eight degrees and twenty minutes east, fifty three and six tenths poles, thence north seventy two degrees and ten minutes east, at the end of forty poles on this line passed three poles to the right of Michael Feather's house, at the end of eighty and fifteen hundredths poles in all to a stake in our reference line at the end of

seven thousand nine hundred and one and four tenths poles from the Fairfax stone.

Exception to the answer because the reference lines mentioned by the witness are not located upon the plat.

369th Q. How is Michael Feather's house indicated on the map?

A. By the words "Michael Father," and a small square dot.

370th Q. Where is the point on the map at which you began to run those reference lines you have just given.

A. This point is indicated on the map at red letter F, figure 2.

371st Q. Did you locate any military lots along there on the Maryland side?

A. I located lots fourteen hundred and two and fourteen hundred, I believe.

372nd Q. How did you locate them?

2793 A. I began at a planted stone in Michael Feather's field, and ran the following reference line: South twenty six and one half east fifty and sixty five hundredths poles, south eighteen degrees and five minutes east twenty one and seven tenths poles, south eighty and thirty five hundredths poles to a stake pointed out as I recollect by some member of the Frankhouser family as the south west corner of lot fourteen hundred and two. Lots fourteen hundred, twelve hundred and ninety nine, twelve hundred and ninety eight etc., are laid down from this point by protraction.

373rd Q. How is the point at which you began to run that reference line, being a stone, as I understood you, in Michael Feather's field, indicated on the map?

A. This point is indicated on the map by red letter and figure F 3, and is the same point as indicated on the map of W. McCulloh Brown in this case as black letter E.

374th Q. What relation does the point F 3 sustain to the tract called the "Diadem" as you understand it?

A. The beginning corner of the Diadem.

375th Q. Is it so marked on the map of Mr. Brown in this case?

A. It is not indicated as a beginning on Mr. Brown's map, but I believe he testified that it was the beginning.

376th Q. How then does the location of the Diadem upon your map as compared with the surrounding tracts of land and the Michler line compare with the location made by Mr. Brown of that tract?

A. It is substantially the same.

377th Q. Has he located lot number fourteen hundred and two on his map?

2794 A. He has not.

378th Q. Referring to the tracing of the map of Frances Deakins, how does your location of the Diadem and lot number fourteen hundred and two correspond with his location of that tract and that lot?

A. They are substantially the same.

379th Q. I hand you a paper, being a certified copy of a deed from Nancy Crane and others, being the widow and heirs of John Crane, deceased, to William Hauger, dated July 31st, 1861, and filed with

the deposition of J. Z. Feathers, marked Ex. No. 7, and I will ask you if you have indicated the location of that tract of land in any way upon your map?

A. I have. That tract of land is indicated on the map by dotted lines, enclosing the words "J. C. Feather, 280", and is as I understand it, the same tract of land now owned by J. C. Feather.

380th Q. I now hand you a deed from Phillip Dennis and wife to Joseph C. Feather, dated April 1st, 1868, which is filed also with the deposition of J. C. Feather, marked Ex. No. 8. Do you remember who it was produced this deed and had it filed as Exhibit No. 8?

A. Joseph C. Feather.

381st. If his name is given in the deposition as "J. Z. Feather", which is right, the name in the deed?

A. I understand that his name, his proper name is Joseph C. Feather.

382nd Q. Is the same man that produced this deed as a witness the one that was living on that tract of land at the time you made the survey?

A. He is.

383rd Q. Did you take any other references from your 2795 line in that locality?

A. I took a reference from the end of seven thousand nine hundred and one and four tenths poles on our line north seventy one and three fourths east thirty six and eight tenths poles to a planted stone in Michael Feather's field, pointed out by him as the beginning corner of the tract called Diadem, and the same point indicated on the map of W. McCulloh Brown by black letter E.

(By Mr. SINCELL:)

384th Q. Where did you start that reference line?

A. At F 3.

Exception to evidence as to the location of this reference line, because the same is not located on the plat.

The WITNESS: This stone is indicated on map No. 1 by red letter and figure "F 3."

(By Mr. PRICE:)

385th Q. Did you say it was in Mike Feather's field?

A. Yes, sir.

386th Q. Where was his line fence east of that?

Exception because there is no line fence located upon the plat.

A. I do not believe I have a reference to his line fence. I do not think his land is fenced to the line quite.

387th Q. I notice on your map the words "Joseph Feather, 451." What does that indicate?

A. It indicates the land owned by Michael and Wesley Feather at this time.

388th Q. Did you locate that or lay it down from any deed or paper?

A. I laid it down from a description in the deed in Mr. Feather's possession, of which I have a copy.

2796 Exception to the evidence as to the location.

389th Q. What deed is it? Describe it.

A. It is a deed from John Crane's heirs to Joseph Feather, dated May 4th, 1864, recorded in Book 49, page 243.

390th Q. Will you file with your deposition a certified copy of that deed?

A. I will, marked "Monroe Ex. No. 16."

391st Q. I notice on your map the word "Spring" just south of the Joseph Feather four hundred and fifty one acre tract. What does that indicate?

A. That indicates a spring in the town of Cranesville, located by Mr. Brown in this case, which point is indicated on the map made by Mr. Brown in this case by a small circle with the word "Spring" underneath.

392nd Q. Where is the town of Cranesville?

A. The larger portion of the town lies directly northwest of this Spring.

Exception, because the town of Cranesville is not located on the plat.

393rd Q. What sized town is that?

A. It is a small village of perhaps two hundred people.

394th Q. Does it extend as far east as Mike Feather's house?

A. No, sir.

395th Q. Does it extend as far east as the line represented by the Michler line?

A. No, sir.

396th Q. How fas is it from that spring to the military lots laid out by Frances Deakins, as you have located them?

A. I should think in the neighborhood of two hundred and forty poles.

397th Q. Did you locate any other houses in that neighborhood?

2797 A. At the end of eight thousand one hundred and seventy poles on our line we passed eighteen poles east of Ethbell Falkenstine's house.

398th Q. How is that house indicated on the map?

A. This house is indicated on the map by the word "Falkenstine" and a small square dot.

399th Q. What other houses did you locate?

A. At eight thousand two hundred and thirty poles we passed one and eight tenths poles to the left of George H. Falkenstine's barn. This point is indicated on the map by a small square dot and the figures "8230." I have some references here. Do you want them?

400th Q. Please give any other references you have taken to points in that locality?

A. At the end of eight thousand two hundred and sixty poles on our line I ran south eighty seven degrees and five minutes east twenty

four and one fourth poles, north eighty three degrees east at forty-five and one tenth poles on this line passed thirty five hundredths of a pole to the right of a planted stone claimed by Notley Browning to stand in the old Maryland and Virginia state line, and as a corner of the Henry Banks eight thousand acre survey. This point is indicated on the map by the red letter F and figure 4. Continuing this line seventy two and eight tenths poles in all to a stone pile pointed out by Notley Browning as a corner of military lot number fourteen hundred and sixty three. This point is indicated on the map by the red letter and figure "F 5." At the end of eight thousand four hundred and forty four and seventy five hundredths poles, on our line, we passed eighty one and fifteen hundredths poles east of a large stone monument on Fike's hill, believed to stand on the Maryland line. This monument is indicated on the map by the words
2798 "Fike's Hill Monument," and a small square on a line representing the Michler line.

401st Q. I notice you have placed on your map lots indicated by the numbers "1463," "1462," "1461," "1460." Why did you place them there in that position?

A. They are laid down by protraction from the point indicated on the map at red letter F figure 5, which was shown to me as a corner of lot fourteen hundred and sixty three. Lot fourteen hundred and sixty three and lot fourteen hundred and sixty two are laid down on this map substantially as shown on the map made by Mr. W. McCulloh Brown in this case.

402nd Q. And how does that location correspond with the location of those lots on the Deakins map as you have it?

A. It corresponds with the Deakins map so far as the tract "Diadem" is concerned, but there appears to be a small vacant strip between the old state line as pointed out to me, and this row of lots.

403rd Q. Is the western line of lots fourteen hundred and sixty, fourteen hundred and sixty one and fourteen hundred and sixty two laid down to correspond with the western line of lots fou-teen hundred and two, fourteen hundred and the other lots of that block as laid down by you?

A. It does not.

404th Q. What is the difference?

A. They are farther east?

405th Q. Which are farther east?

A. Lots fourteen hundred and sixty, fourteen hundred and sixty one, fourteen hundred and sixty two and fourteen hundred and sixty three.

406th Q. About how much farther east?

A. About twenty rods, I should say.

2799 407th Q. Is the strip of land between lots fourteen hundred and sixty, fourteen hundred and sixty one and fourteen hundred and sixty two and the old state line as pointed out to you about the same width as the difference between the western lines of those two blocks of lots?

A. Practically so; yes, sir.

408th Q. So that if lots fourteen hundred and sixty, fourteen hun-

dred and sixty one and fourteen hundred and sixty two were placed on the same line as to their western boundary as lots fourteen hundred and two and fourteen hundred, etc., their western boundary would be practically on the old state line as pointed out to you, would it?

Excepted to as leading.

A. Yes, sir.

409th Q. On the Deakins map, how does the boundary of lots fourteen hundred and sixty, fourteen hundred and sixty one and fourteen hundred and sixty two correspond with the western boundary of lots fourteen hundred and two, fourteen hundred, twelve hundred and ninety eight, etc.?

A. They are on the same north and south line.

410th Q. I hand you certified copies of three patents from the commonwealth of Virginia to Stephen West, all dated the 2nd day of October, 1786, one for five hundred acres and two for four hundred acres each, and ask you to file them with your deposition?

A. I will do so, marked "Monroe Ex. No. 17," "18" and "19," respectively.

411th Q. Have you laid down those three patents on your map?

A. I have.

412th Q. How have you laid them down? and give your reasons for placing them where you have.

2800 A. They are laid down by protraction immediately north of Honore Martin and John Hoye survey of thirty six hundred acres, and are thus laid down because the Honore Martin survey calls for the lines of these several tracts as recited in these papers, and they agree with the lines of the Honore Martin tract. The Honore Martin calls for these tracts. The Honore Martin calls for these tracts in the following words, "Adjoining the Maryland line lands of William McCleary Henry Banks near the pine swamp—a corner of William McC'eary's settlement survey of four hundred acres and a corner of his survey of four hundred acres made by virtue of pre-emption warrant, and running with the latter reversed south twenty five degrees east twenty three poles to a cherry tree, south forty five east eighty three poles to a cherry, south sixty six west one hundred and thirty six poles to two maples and two white oaks, north sixty seven west one hundred poles to a cherry, corner to aforesaid pre-emption survey, and likewise corner to William McCleary's five hundred acre tract, and with the same reversed south fifty eight west three hundred and forty three poles to a maple and cherry, his corner, and the beginning corner of Henry Banks," etc. The last line of this survey called with the Maryland line north fourteen hundred and fifty poles to intersect McCleary's line, and with it one hundred and eighty eight poles to the beginning.

413th Q. Now, what lines in the Stephen West patents just filed correspond with those lines you have just read?

A. The line in Stephen West's four hundred acre tract surveyed the twentieth day of November, 1785, has the following calls:

"South sixty seven east one hundred poles to two maples and
2801 two white oaks, north sixty six east one hundred and thirty six poles to a cherry tree, north forty five west eighty three poles to a cherry tree, north twenty five west twenty three poles to a maple, corner to his settlement." In his survey for five hundred acres, made on the nineteenth day of November, 1785, the following line appears: North fifty eight east three hundred and forty-three poles, crossing a run to cherry tree, corner to his settlement. In his patent for four hundred acres surveyed on the nineteenth day of November, 1785, the following calls appear: South forty nine west two hundred and sixty eight poles to a cherry tree, corner to his settlement, as assignee of Bradbury, and with the same south twenty five east, one hundred and twenty poles to a maple, thence south eighty eight east three hundred and twenty four poles, crossing a run to the beginning; all of the lines contiguous to the Martin and Hoye survey agreeing except the last, which is south eighty eight east whereas in the Hoye survey a due west course is called for.

414th Q. What is the difference in south eighty eight east and a due west course?

A. Two degrees.

Exception to the introduction of those patents and the answer on the groun*f* that there is no sufficient evidence of possession given in said patents to sustain a claim of adverse possession by the defendant in this cause.

415th Q. I now hand you a certified copy of a deed from William Sigler, commissioner of delinquent and forfeited lands to John Crane, dated the eighth day of June, 1840, and ask you to file the same with your deposition in this cause.

2802 A. I will do so, marked "Monroe Ex. No. 20."

416th Q. I hand you a certified copy of a patent from the Commonwealth of Virginia to Stephen West, dated the second of October, 1786, for 1000 acres, and ask you to file the same with your deposition in this case.

A. I will file the same marked, "Monroe Exhibit No. 21."

417th Q. Can you tell from the description of that 1000 acres, whether it adjoins either of the other surveys of Stephen West which have been introduced in evidence?

A. It does, calls to adjoin his other tracts, and in the pine swamp.

418th Q. Is that tract indicated on your map?

A. It is.

(By Mr. SINCELL:)

419th Q. Does it mention these other tracts?

A. Yes, sir.

Exception to the introduction of the patent, on the ground that it affords no evidence of possession.

(By Mr. PRICE:)

420th Q. Is there such a thing as the pine swamp along these controverted lines in this case?

A. There is.

421st Q. What is the extent of that pine swamp, so far as it extends along the controverted lines in this cause? Going northward, where does it begin, and where does it end?

A. Going northward it begins at or near the point marked on the map "22 M," representing twenty two miles from the Fairfax stone, and extends northward to a point at the end of seven thousand eight hundred and forty eight and six tenths poles from the Fairfax stone on said line, at the south edge of Michael Feather's field. This point is represented on the map by the red letter F, figure 6.

422nd Q. About how far would that be on the ground?

A. About two and one half miles.

423rd Q. What is the character of this pine swamp?

A. It is very marshy and swampy flat, thickly grown up with small pine timber, or was at that time.

2803 417th Q. Any undergrowth?

A. Well, there was laurel in it.

418th Q. Was it difficult or easy to get through this swamp in surveying your line?

A. We had considerable difficulty in getting through on account of the ground being very soft, so soft that we had to get brush to stand on while taking sights.

419th Q. I hand you a deed from Abram Jeffers and William Elliott and wife to John Crane, dated the 13th day of August, 1832, and endorsed as recorded in Book No. 3, page 167, and ask you what you know about it.

A. This deed was handed to me by J. M. Crane as one of the title papers of his grandfather, John Crane, of lands lying in that section of country near the pine swamp.

420th Q. Is the deed book in which that deed is recorded now in existence?

A. No, sir; it was destroyed by fire in the burning of the court house.

421st Q. Can you file that deed with your deposition in this cause?

A. I could not without permission of Mr. Crane, as he requested me to return the paper to him.

422nd Q. Will you file a copy, to be verified as to its correctness by the notary?

A. I will, marked "Monroe Ex. No. 22."

Exception to this deed, as the same is not located upon the plat in this cause.

423rd Q. Is the land described in this deed located on your map in any way?

A. It is not, not from the boundaries.

2804 424th Q. Can you tell from the description contained in the deed what territory it would cover from your own knowledge of the country and the surveys you have made?

A. From a knowledge of the country, I should judge that this

survey covered a portion of the territory about where Michael Feather's house is now located.

425th Q. Why do you think so?

A. Because of the fact that in this deed there is a line spoken of or mentioned as north 76 east 340 poles through the north end of the pine swamp, and the beginning corner thereof is described as two white oaks at the north-east side of the pine swamp, and south of John Lewis's barn.

426th Q. Was there any land in there known as the John Lewis land?

A. Not that I recall at this time.

427th Q. I hand you a deed from John Summers, Jr., and wife to John Crane, dated August 31st, 1837, and now on the book as recorded, in Book 7, page 133, and will ask you what you know about that paper.

A. This is a paper handed to me by J. M. Crane as one of the title papers of his grandfather for lands lying in that country known as the pine swamps.

428th Q. Can you file that deed with your deposition?

A. I could not without the permission of Mr. Crane, who asked me to return it.

429th Q. Will you file a copy of it to be verified by the notary?

A. I will, marked "Monroe Ex. No. 23."

Exception to the introduction of the deed, because it is not located, and has no connection with the title papers in this cause.

430th Q. From the description of the land conveyed by
2805 that deed, where would you judge it was located, from your knowledge of the country?

A. I should judge from the description in this paper that it covers that portion of the territory designated on the map by the words "Crane's heirs," and "Falkenstine," and the northern portion of the Joseph Feather 451 acre tract.

431st Q. Why do you think so?

A. It is described as being a parcel of land situated in Preston county and state of Virginia, on the north side of the Big Pine swamp.

432nd Q. Is there anything to indicate that it adjoins or is connected in any way with the 520 acres conveyed by the deed which has been previously introduced?

A. Its lines some of them coincide with the lines of the deed from Abram Jeffers and William Elliott to John Crane, just filed in this case.

433rd Q. That would indicate then, what?

A. That it adjoins that tract.

Exception by counsel for the State of Maryland.

The WITNESS: It also calls east 78 poles to a line of a survey made for Elliott, etc., and thence with three lines of the same.

434th Q. Going northward from the locality about which we have recently been speaking, what, if any, large tract of land did you locate—designate on your map?

A. I located the Henry Banks 8000 acre survey—or laid down the Henry Banks 8000 acre survey.

435th Q. Did you run out its lines on the ground?

A. I did not.

436th Q. How is it designated on the map?

A. By the words "Henry Banks, 8000 acres," enclosed by a solid black line.

Exception.

2806 437th Q. Give the reasons why you have placed it on the map in the manner in which it appears.

A. It is placed on the map from data secured from a certified copy of a survey and subdivision by Reuben Morris, and also a certified copy of a map accompanying said report. This tract is laid down substantially as indicated on this map, with the exception of the southern line, which is laid down to conform to the stone corner as pointed out by Notley Browning.

438th Q. Will you file that report and map with your deposition.

Objection to the introduction of this copy of the map on the ground that it is not a properly certified copy.

A. I will. They are marked Monroe Exhibits Nos. 24 and 25 respectively.

439th Q. Who was Reuben Morris?

A. At that time he was assistant surveyor of Preston county, of James G. Crawford, surveyor of Preston county.

440th Q. Where did he live?

A. About two miles south of Kingwood.

441st Q. Is he still living?

A. No, sir.

442nd Q. How long has he been dead?

A. He has been dead ten or fifteen years, I suppose.

443rd Q. What was his occupation?

A. He was a surveyor.

444th Q. What do you know about his practice as a surveyor in this county?

A. I know he did a great deal of the surveying in Preston county.

445th Q. Are you familiar with his handwriting?

2807 A. I am.

446th Q. Referring to the report which you have filed as Ex. No. 25, in whose handwir-ing is the signature to that report?

A. I believe that to be the signature of R. Morris. I have no doubt of it, in fact.

447th Q. I now hand you a certified copy of a patent from the Commonwealth of Virginia to Henry Banks for 8000 acres, dated July 27th, 1805, and will ask you to file same with your deposition.

A. I will do so, marked "Monroe Ex. No. 26."

448th Q. Do you understand that the land granted by that patent is the same land indicated on your map as the Henry Banks 8000, and covered by the report and map in the Crane case about which you have testified?

A. I do.

449th Q. This patent calls to run with or near Col. McCleary's lines 784 poles, crossing pine swamp run, and some other drains to five white oaks in the Maryland line, and with it north 1780 to a double chestnut by the new road. Where is the point on your map at which the white oaks in the Maryland line are called for in that description?

A. At the point indicated on the map by the red letter and figure F 4.

450th Q. Is that the same point that was pointed out to you by Notley Browning?

A. It is.

451st Q. From that point the call is to run north 1780 poles with the Maryland line to a double chestnut by the new road. Where would the end of that north line be indicated on your map?

2808 A. That point is indicated on the map by the red letter and figure "G1."

452nd Q. Going north from the point on your line corresponding to the point indicated by red letter "F4," what references do you take from your line?

A. At 8945 poles on this line, we crossed the line fence between Notley Browning and John Ad. Reckard.

453rd Q. Where is that point indicated on your map?

A. That point is indicated on the map by the red letter and figure "F7," at about 28 miles on this line we passed west of John Ad. Reckard's dwelling house. I did not take the exact measurement at his house.

454th Q. I hand you a certified copy of a deed from Jonas De Berry and wife to John A. Reckard, dated December 17th, 1880, and filed with the deposition of Amanda J. Reckard, in this cause, as exhibit No. 9, and I will ask you whether you have laid down that tract of land on your map?

A. I have.

455th Q. How is it indicated?

A. It is indicated on the map by the dotted lines enclosing the word "Reckard 140, and the figures and letters "28 M." which represents 100 acres of the 140 acres owned by J. A. Reckard.

456th Q. What reason had you to believe that that tract lies as you have indicated?

A. It calls to begin at a stone pile in the old Maryland 169 poles north of two pitch pines standing 16½ poles north of White rock run. These pitch pines, I understand to be the same pines called for in the description of lot No. 1 of Reuben Morris's report of survey in the case of John Crane's administrator *vs.* John

2809 Crane's heirs at the end of the first line of said description, which is as follows: "Beginning at pointers in the old Maryland and Virginia line (in the fourth line of the Diadem survey and 12 poles from the fourth corner of the Diadem running south 83 west) and running thence with the said Maryland and Virginia line north 516 poles (crossing White Rock Run) to two pitch pines standing about 6½ poles north of said run." The two pitch pines called for are indicated on the map by red letter F, figure 8.

457th Q. In the deposition of Mrs. Amanda J. Reckard, wife of John A. Reckard, taken in this cause, before you as notary public, I believe at her residence—where was that residence located with reference to the reference line you were running north from the Fairfax stone?

A. It is located east of that line, I should judge 40 or 50 rods; on the 100 acre tract above referred to.

458th Q. You did not accurately locate that house by survey did you?

A. I did not.

459th Q. Will you indicate its location on the map approximately, as you remember it from having been there?

A. This house is indicated approximately on the map by a small square dot, and the red letter "F9."

Objection by counsel for the State of Maryland to the method of location.

The further taking of these depositions is adjourned until to-morrow at the same place, at 8:30 o'clock, A. M.

2810 WEDNESDAY, *July 25th,* 1906.

Present, the same parties as yesterday.

JULIUS K. MONROE's examination resumed by Mr. PRICE:

460th Q. I hand you a certified copy of a patent from the Commonwealth of Virginia to Frances and William Deakins for 500 acres, dated October 9th, 1790, and ask you to file the same with your deposition.

A. I will do so, marked "Monroe Ex. No. 27."

461st Q. Is that 500 acre survey indicated on your map?

A. It is.

462nd Q. How?

A. By a tract marked "F. & W. Deakins 500," enclosed within the solid lines, and adjoining a tract of land called "Elder Spring" tract, 411.

463rd Q. Is the Elder Spring a Maryland or Virginia grant?

A. A Maryland grant.

464th Q. Is it represented on your map No. 1?

A. It is.

465th Q. How?

A. By the tract of land enclosed in broken line, marked "Elder Spring tract, 441."

466th Q. Is that tract also laid down on the map of Mr. Brown here in this cause?

A. It is.

467th Q. How does his location of it correspond with yours with reference to the Michler line?

A. Substantially the same.

468th Q. One of the calls of this 500 acre patent to Frances and William Deakins is "North 70 west 76 poles to a bounded white oak

and black gum, they being the beginning trees of aforesaid tract of land called "Elder Spring."

A. That 70 west 76 poles is wrong, I reckon.

2811 469th Q. We cannot correct it here. Please indicate on your map the position of that white oak and black gum, the beginning of the Elder Spring tract?

A. This point is designated on the map by the letters "W. O." and the word Gum," near the figures "9488.8."

470th Q. The 500 acre tract just mentioned calls to begin at the end of 13 poles on 14th on the line of a tract of land, Elder Springs originally granted and patented by the state of Maryland unto the aforesaid Frances Deakins." Indicate, please, on your map that beginning point, 13 poles on 14th line of Elder Spring tract?

A. This point is indicated on the map by the red letter and figure "G2."

471st Q. Please give the common lines between this 500 acre tract and the Elder Spring tract.

A. The lines called for in this 500 acre tract common with the Elder Springs are south 51 east 43 poles, north 77 east 80 poles, north 41 east 40 poles, north 70 west 76 poles, to a bounded white oak and black gum. This line, I believe to be an error, as it should be about north 7 west 76 poles. My recollection is that it is exactly 7 west.

472nd Q. How is that line called for in the Elder Spring tract?

A. That line is the closing line of the Elder Spring survey, and has no bearing.

473rd Q. In order to close the Elder Spring survey about what course would it have to run?

A. About north west—seven west.

474th Q. Instead of north 70?

A. Yes, sir. I think it is seven west. That is my recollection.

2812 475th Q. Did you take any reference from your line you were running in the locality of this 500 acre Deakins survey?

A. I did. At the end of 9488.8 poles I ran north 56½ west 29.95 poles to a black gum and white oak stump supposed to be the beginning corner of a tract of land called Elder Springs patent, to F. & W. Deakins in Maryland in 1774. This gum is still standing, and well marked. The white oak stump is rotted down even with the ground. This point is marked on the map by the letters "W. O." and words "and gum," being the same point heretofore referred to, and the same point marked on the map made by W. McCulloh Brown in this case at black letter F. At 9097.4, crossed division fence, division line between J. A. Recard and Polk Sines. At 9280 poles set 29 mile stake about 20 poles east of Preston Savage's house, and about the same distance a little north west of Sisler's house. These houses are indicated on the map by the words "P. Savage," and a small square dot, and "Sisler" and a small square dot.

Exception by counsel for the State of Maryland.

The WITNESS: At 9392 poles reference stake standing about thir-

teen poles south west of Ezzra Savage and Asa Savage's houses. These houses are represented on the map by two square dots and the word "Savage." At 9515 poles, passed about 25 poles east of S. Faulkner's house. This point is indicated on the map by a small square dot, and the letters "S. Faulkner." At 9528 poles passed three poles east of Preston Welch's new house. This point is indicated on the map by a small square dot and the letters "P. Welch." At the end of 9902.45 poles, I ran south 71 degrees 40 minutes west 16.27 poles to a point thought to be a corner of the tract called Elder
2813 Spring, and the Henry Deal survey of 367 acres. This point is designated on the map by the red letter and figure "G3." At about 9860 rods passed about 40 rods west of Marshall Friend's house. This distance, however, is estimated. This house is indicated on the map by a small square dot under the words "Marsh. Friend."

476th Q. I hand you a deed from Frazee to Henry Sines dated December 15th, 1890, and filed with the deposition of Henry P. Sines, as exhibit No. 12. Will you state whether the tract of land conveyed by that deed is represented on your map.

A. It is located on the map, and is designated by the words "Sines 100," enclosed by a dotted line.

Exception.

477th Q. You spoke of the point G3 on the map as representing a corner of the Henry Deal 367 acres. Have you the patent for that tract of land?

A. I have. The same is filed in this cause, marked "Monroe Ex. No. 28."

478th Q. That tract is laid down on your map and designated?

A. This tract is laid down in solid black lines on the map enclosing the words "Henry Deal 367."

479th Q. Why have you located it in the manner you have?

A. This tract calls to adjoin James Irvin, and runs with two lines of the same, and it is my understanding that James Irvin at this time owned the northern portion of the Elder Spring tract, and the corner designated as G3 on the map is a common corner of the Elder Spring and this tract.

Exception as to the understanding of the witness as to the ownership of the Elder Spring tract by James Irvin.

2814 480th Q. Are there any lines in this Henry Deal tract of 367 acres that correspond in course and distance and call with any of the lines of the Elder Spring tract?

A. There are two lines?

481st Q. Just give them?

A. The line east 100 poles to a stone pile, corner to said Irvin, thence south 7 west 80 poles to a stake, are common lines with the lines of the Elder Spring.

482nd Q. Are those the lines that converge at the point on your map marked red letter "G 3?"

A. They are.

483rd Q. Had you any other way of determining the location of that tract?

A. I had. At the end of 9987.5 poles on our line, I ran north 82¾ west 2.6 poles to a red oak pointed out to me by Marshall Friend as a corner of the Deal survey, and his corner, which is a part of the Deal survey, and the Teets land. This point is designated on the map by the red letter "G" and figure "4."

484th Q. I notice on the map the words "Henry Deal 328." Does that indicate a tract of land. Is it intended to?

A. It is.

485th Q. What tract is that?

A. It indicates a tract of land of 328 acres surveyed for Henry Deal in Preston county, West Virginia, April 22nd, 1834.

486th Q. Will you give your reasons for locating that tract as you have?

A. In the surveyor's record of Preston county this tract of land is called for as adjoining the lands of said Deal on the south-
2815 east side, the lands of James Irvin, Henry Kelly and Raymonds' tract called Elder Spring survey, and beginning at a white oak corner of said Deal's former survey at the end of the fourth line.

(By Mr. SINCELL:)

487th Q. What is the date of the patent?

A. The date of the survey is April 22nd, 1834. I haven't the date of the patent.

Mr. PRICE: The date of the patent is 1837.

(By Mr. PRICE:)

488th Q. Will you file a certified copy of the patent to Henry Deal with your deposition?

A. I will, marked "Monroe Ex. No. 29."

489th Q. What lines then of that Henry Deal tract would be common with the Elder Spring tract?

A. The lines in this tract common with the Elder Spring tract are north five east 126 poles to a chestnut, north 19 west 99 poles to a white oak, north six east, 93 poles to a stone pile.

490th Q. Will you read the corresponding lines in the Elder Spring tract?

A. I find upon examination that they do not correspond exactly with those lines, although this patent has the following calls: North 37 west 46 poles to a gum and large white oak, corner to Raymonds' land, and with his line north five east 126 poles to a chestnut, corner to Henry Kelly, and with his line north 19 west 99 poles to a white oak, corner to James Irvin, and with his ine north six east 93 poles. Then east 6 poles to a stake and stone pile, corner to aid Deal's former survey. I was reading the wrong one.

491st Q. Had you given the white oak corner before?

A. No.

492nd Q. Just read then, from the Elder Spring.

2816 A. The calls in the Elder Spring tract agreeing most nearly with these calls are as follows: Beginning in the

center between two bounded trees, a white oak and black gum standing on a draught of Buffalo run, about 50 perches west from the main run, and about 200 yards from a spring that breaks out of a ridge that divide- the waters of Sandy creek and Buffalo run about eight or nine miles southwardly of Jacob Froman's mill, and running thence north 6 east 146 perches and north 20 west 80 perches, north 7 east 173 perches.

493rd Q. What is the difference between the first line of the Elder Spring and the line you read running from the gum and white oak in the Deal 328 acres?

A. The first line of the Elder Spring calls for north six east 146 and the corresponding line in the deal survey calls for north five east 126 poles.

494th Q. And the next line—what is the difference?

A. The next line in the Deal survey is north 19 west 99 poles, and the corresponding line in the Elder Spring is north 20 west 80 poles.

495th Q. The next?

A. The next line in the Deal survey is north 6 east 93 poles, and the corresponding line in the Elder Spring tract is north 7 east 173 perches.

496th Q. Did you find the lines which call for Deal's former survey to correspond with any of the lines of the Henry Deal 367 acre tract?

A. I find the call in this 328 acre tract east 6 poles to a stake and stone pile, corner to said Deal's former survey, and thence with the third line of the same east 126 poles to a chestnut and white oak, his corner, to agree substantially with the following call in the
2817 367 acre tract, which is east 124 points to a chestnut and white oak. The next call in the 328 acre tract is north 143 poles to the beginning, and the corresponding call in the 367 acre tract is north 143 poles to a white oak. The description in the 328 acre tract calls to begin at a white oak, corner to said Deal's former survey.

497th Q. I notice on the map lying east of the Henry Deal tracts and adjoining Henry Deal 328 acres military lots 2981, 2980, 2983, 2985 and 2987, which last lot does not seem to exactly adjoin. How did you locate those military lots?

A. The lots 2985, 2989, 2952 and 2987 are laid down from a reference line run as follows: Beginning at the end of thirty one miles on our reference line, I ran south 17.4 poles to a stake south 40 east 49.6 poles to a stake south 55.50 east at 86.1 poles to a large chestnut pointed out by Marshall Friend as his corner.

498th Q. Designate that on the map?

A. Which is designated on the map by red letter and figure "G 5." Extended this line to the end of 88.4 poles to a stake in Melville Friend's field, thence north 83¾ east 11.5 poles to a dead white oak pointed out by Marshall Friend as standing in military lot line of 2985, which is designated as red "G 6" on the map. From this point I ran north 3.45 east, at the end of 58 poles, I ran east 5.9 poles to a place pointed out by Mr. Friend as a corner of lot No.

2985. This point is designated on the map by red letter and figure "G 7." That is the northwest corner of Friend's lot No. 2985. I do not know who lived there. At the end of 139.3 poles I ran north 77¼ west 14.4 poles to a white oak claimed by Marshall Friend as a corner of the original Deal survey of 367 acres. This point
2818 is designated on the map by red letter and figure "G 8." At the end of 227.5 poles I ran south 87 east 16.2 poles to the corner of lots 2989 and 2952, pointed out by Mr. Friend, at that time owned by Isaac Morris. This point is indicated on the map by red letter and figure "G 9."

499th Q. Did you locate a tract of land known as the "Cherry Hill" tract, granted by the State of Maryland?

A. I did not locate it on the ground. I laid it down on the map.

500th Q. It is designated how on the map?

A. It is designated by broken lines enclosing the words "Cherry Hill Tract."

501st Q. Is that tract also located upon the map of Mr. Brown, surveyor in this cause?

A. It is.

502nd Q. With reference to the Michler line, how does that location of the Cherry Hill tract by Mr. Brown on his map correspond with the location of that tract on your map?

A. It is substantially the same on Mr. Brown's map as mine with reference to the Michler line.

503rd Q. How does your location of Lot No. 2952 correspond with Mr. Brown's location of that lot in regard to the Cherry Hill tract?

A. Practically the same as Mr. Brown has it.

Q. These military lots going southward say from 2952, including 2989, 2987, 2985, 2983, 2980, 2981—do they call for each other in the original description by Frances Deakins? (Examines papers.) None of those lots call for 2952?

A. They do not.

504th Q. And 2952 calls for what tract?

2819 A. Cherry Hill.

505th Q. Looking at the Frances Deakins map of military lots, I will ask you whether they are laid down on that map with reference to the Cherry Hill tract as you have laid them down on your map?

A. They are, except the eastern boundary on the Deakins map, is in one straight line, whereas they are laid down on this map No. 1 showing offsets.

506th Q. Why did you show the offsets in the eastern line?

A. These lots are laid down from points on the ground shown me by Mr. Friend as being corners and in the lines of these lots, and the eastern lines were laid down to conform to those points.

507th Q. Was any point shown you as a corner of 2952?

A. Yes, a point was shown me by Mr. Friend as a corner of lot 2952, and 2989, which is designated on the plat by red letter G, figure 9.

508th Q. How does the location of lot 2952 with reference to the Cherry Hill tract correspond on your map with its location on the Deakins map?

A. It corresponds with the location on the Deakins map?

509th Q. How is that Cherry Hill tract located?

A. This tract is located by protraction to adjoin lot 2952 on the north, in accordance with the description of the Cherry Hill tract.

510th Q. I hand you a patent granted to Jesse Spurgin by the state of Maryland for a tract of land called "Whipperwill" for 177 acres, dated July 19th, 1842, and I ask you to file the same with your deposition.

A. I will, marked Monroe Exhibit No. 30.

511th Q. I will ask you where you have located that tract and designated it on your map?

2820 A. It is designated on the map by a broken line, enclosing the word "Whipperwill."

512th Q. Does it cover any part of the old Cherry Hill tract?

A. It does. It covers most of that portion of the Cherry Hill lying in Maryland, or a considerable portion of it, you might say.

(By Mr. SINCELL:)

513th Q. Did you locate that Whipperwill tract on the ground?

A. No.

Exception to the introduction of the patent, because it was not located on the ground.

514th Q. I hand you a patent issued by the Commonwealth of Virginia to Jesse Spurgin for 240 acres, dated October 21st, 1857, and ask you to file the same with your deposition?

A. I will do so, marked "Monroe Ex. No. 31."

515th Q. Have you located that on your map?

A. I have.

516th Q. How is it designated?

A. Designated by solid black lines enclosing the words "Jesse Spurgin 240."

Excepted to because not located on the ground.

517th Q. Does that survey call for the Whipperwill tract?

A. It does. This tract is described as beginning at a chestnut eight poles north of the beginning corner to said Spurgin's Maryland Whipperwill survey.

(Noon).

1:30 O'CLOCK P. M.

Examination of JULIUS K. MONROE resumed by Mr. PRICE:

518th Q. Where is that beginning corner indicated on your map?

A. The beginning of the Jesse Spurgin 240 acre tract is indicated on the map by red letter G, figure 10.

2821 519th Q. This survey calls to run from that beginning corner south 204 poles to a stone pile, then south 77 west 84 poles to a chestnut oak, corner to Henry Deal's first survey, also the second corner to the survey made for Ryner. What point is indicated on your map for the end of that line south 204 poles?

A. That point is indicated on the map by red letter and figure "G 11."

520th Q. Is that a corner of the Henry Deal survey on your map?

A. No, sir; it is the next corner that runs from there.

521st Q. The next call is south 77 west 84 poles to a chestnut oak corner to Henry Deal's first survey. Where is that point on your map?

A. This point is indicated on the map by red letter and figures "G 12."

522nd Q. What Henry Deal survey is that point a corner of as shown on your map?

A. The corner of the Henry Deal 367 acres.

523rd Q. Is that his first survey as compared to the two you have down?

A. It is.

524th Q. Has this Spurgin tract of 240 acres common lines with the Henry Deal 387?

A. It has one common line with that tract.

525th Q. What line is it?

A. The line described in the Henry Deal 367 acre survey as running north 50 west 160 poles to a chestnut conforms practically to a line in the Jesse Spurgin survey of 240 acres, which calls from a chestnut oak, corner to Henry Deal's first survey, and also second corner to the survey made for Ryner, thence north 50 west 156 poles to a chestnut near the head of a drain, corner to said Deal.

2822

526th Q. I believe you stated that the Henry Deal 367 acres calls for and runs with the Elder Spring tract?

A. I did.

527th Q. And the Jesse Spurgin 240 calls for and runs with the Henry Deal 367 acre tract?

A. It does.

528th Q. I notice certain military lots, numbers 2954, 2957, 2958, north of the eastern part of the Cherry Hill tract. How did you locate those tracts on the map?

A. These tracts are located by protraction with reference to the Cherry Hill tract. Lot 2954 calls to begin at the end of 50 perches, on the fifth line of the Cherry Hill, etc. Lot 2957 calls to begin at the end of the second line of lot 2954. Lot 2958 is laid down by protraction from the Deakins map.

529th Q. Are those lots shown upon the Deakins map?

A. They are.

530th Q. How does their location on that map in relation to the Cherry Hill tract correspond with the way you have located them?

A. Practically correspond, except the closing line of lot 2954 does not correspond with the lines of the tract called Cherry Hill.

531st Q. I call your attention to Exhibit No. 16 filed with the depositions, being a certified copy of a deed from Jesse Spurgin and wife to Andrew Teets, dated April 27th, 1855, for 240 acres. I will ask you whether that describes any of the lands about which you have testified.

A. It describes the tract of land marked on the map as "Jesse Spurgin 240."

— Q. From the description, what is your opinion as to whether it conveys the whole of the 240 acres granted to Jesse Spurgin by the patent dated April 21st, 1857?

Objection.

2823 A. In my judgment, it does.

533rd Q. In courses and distances?

A. The courses and distances agree with the patent made to Jesse Spurgin for 240 acres, with the exception of two bearings, which appear to be transposed in the copy, reading north 62 west 68 poles, instead of north 52 west 68 poles, and north 52 east 19 poles instead of north 62 east 19 poles.

534th Q. They both call to begin at a chestnut eight poles north of the beginning corner of Whipperwill, don't they?

A. They do.

535th Q. I show you exhibit No. 10, being a certified copy of a deed from Andrew Teets and wife to George W. Teets, dated June 26th, 1869. I will ask you from the description of the land conveyed by that deed, whether you can identify it as any part of the land about which you have testified.

Excepted to.

A. I can. This tract appears to be the south-eastern portion of the original 240 acres.

Excepted to.

536th Q. Is it indicated in any way on the map?

A. It is, by the words "Teets 82," enclosed by a dotted line.

537th Q. I show you Exhibit No. 15, being a certified copy of a deed from John Taylor and wife to Sylvanus Fike, dated March 25th, 1893, and will ask you whether that describes any part of that land?

A. It does. That portion of the land indicated on the map by the words "Sylvanus Fike 48," and is the eastern portion of the Jesse Spurgin 240 acre tract—or rather the north eastern portion, I suppose.

Exception to the answer.

2824 538th Q. I show you Exhibit No. 17 heretofore filed with the depositions in this cause, being a certified copy of a deed from John Taylor and wife to Joshua Fike, dated April 8th, 1890. I will ask you if you can identify the land conveyed by that, by anything on your map?

A. I can. This is indicated on the map by the words, "Joshua Fike," and the figures "53," enclosed by broken lines, and it lies in the southern portion of the Jesse Spurgin 240 acre tract.

Excepted to.

539th Q. Did you take any references to the houses of any of the people living on that Jesse Spurgin tract of land?

A. At the end of 10160 poles, I passed about 35 poles east of

Joshua Fike's house. This house is indicated on the map by a square dot opposite the figures "53" and below the word "Fike."

540th Q. Is he east or west of the Michler line?

A. He is east of the Michler line.

Excepted to.

The WITNESS: At the end of 9,920 poles on this reference line we passed about 25 poles east of Amanda Hull's house. This house is indicated on the map by the words "Amanda Hull," and a small square dot.

541st Q. I hand you a copy of a patent from the Commonwealth of Virginia to Isaac James for 220 acres, dated November 28th, 1839, a certified copy of which is filed with the defendant's answer in this cause as defendant's exhibit No. 10, and I will ask you if that land granted by that patent is represented on your map?

A. It is represented by solid black lines enclosing the words "Isaac James" and figures "220."

543rd Q. How did you locate that on your map?

A. At the end of 10,469.9 poles on our line, I ran a refer-
2825 ence line north 58 degrees and 48 minutes east 30 poles to a chestnut snag, which as I recollect, was pointed out to me by Joseph Guthrie as a corner to his tract, and the Isaac James tract. This tract is laid down to conform to this reference line. The point at which this chestnut snag stood is indicated on the map by the red letter and figure "H 1."

544th Q. This patent calls to run south 67 east 182 poles to a stake in the state line, and with the same north 295 poles to the beginning, having called to begin at a black oak in the state line. Will you indicate on the map the beginning corner of that survey, as you have located it.

Excepted to.

A. The beginning corner of this survey is indicated on the map by red letter and figure "H2."

545th Q. And the point where the state line is intersected begun at the end of the course south 67 east, 182 poles. Where is that on the map?

A. That is indicated by the red letter and figure "G 11."

546th Q. Does that corner correspond with the corner of any other survey?

A. No. It falls a few rods south of the point "G 10."

547th Q. Did you run any third reference line in connection with that Isaac James land?

A. At the end of 10,469.9 poles I ran a line south 71, 10 east 96.9 poles to a point in the line between Thomas and Evans. Evans now owns the James tract. This point was in a lane, as I recollect, and was pointed to me by Alex. Thomas as a point in the old state line. This point is indicated on the map by red letter and figure "H 3."

2826 **548th Q. I hand you exhibit No. 18, filed with the deposition of Lucinda Fearer heretofore taken in this cause, being**

a certified copy of a deed from Joseph Fearer, Sr., and wife, to Joseph Fearer, Jr., and William Fearer dated April 17th, 1883, conveying 50¼ acres, and I will ask you whether the land conveyed by that deed is represented on your map, and if so, how?

Excepted to.

A. It is. It is marked "Fearer, 50¼." The last two lines of this tract, however, do not appear to coincide with the lines of the James Tract. I was told by Mr. Fearer that this land did adjoin the Isaac James or Evans tract, as he called it.

Objection to the location.

549th Q. What difference do you find between his lines and the James?

A. The last line of the Fearer tract, and the first line of the James survey are probably intended to be the same. In the deed from Joseph Fearer, Sr., to Joseph Fearer, Jr., this line is described as north 83 east 42 poles, while the line in the James survey calls south 83 west 40 poles, but the same object is called for at this point by both papers, namely, a locust. The line in the Fearer tract called north 35 east 28 poles is probably an error as to distance. This line in the James survey calls for the same bearing.

(By Mr. SINCELL:)

550th Q. What distance does it call for in the James survey?

A. The James survey runs clear on past the corner.

(By Mr. PRICE:)

551st Q. I hand you patent from the Commonwealth of Virginia to Joseph Fearer for 119 acres, dated January 31st, 1848,
2827 and will ask you to file that with your deposition.

A. I will do so, marked "Monroe Ex. No. 32."

552nd Q. How is that land represented on the map, if at all?

A. It is represented by solid black lines enclosing the words "Joseph Fearer 119."

553rd Q. I also hand you a certified copy of a patent from the Commonwealth of Virginia to David Van Sickle for 100 acres, dated September 20th, 1834, and ask you to file that with your deposition.

A. I will do so, marked "Monroe Ex. No. 33."

554th Q. Have you indicated that Van Sickle 100 acres on the map?

A. I have indicated it by solid black lines enclosing the words "David Van Sickle," and figures "100."

555th Q. I also hand you a certified copy of a patent from the Commonwealth of Virginia to Lewis Van Sickle, dated November 10th, 1834, for 120 acres, and also will ask you to file that with your deposition.

A. I will do so marked "Monroe Ex. No. 34."

556th Q. How is that tract designated on the map?

A. That tract is designated by solid black lines, enclosing the words "Lewis Van Sickle," and the figures "120."

557th Q. Does the description in the patent of the David Van Sickle 100 acres call for the Maryland line?

A. I believe not. (Examines paper.) It does not.

558th Q. Have you a copy of the survey upon which that patent was based?

A. I have.

559th Q. Will you file a certified copy of that survey with your deposition?

A. I will, marked "Monroe exhibit No. 35."

560th Q. Does that survey call for a point on the Maryland line?

2828 A. It does. The description in the patent and the survey are identical, with the exception of the fourth line, which in the survey calls north 75 east 79 poles to a small Spanish oak and stone pile on or near the Maryland line, and with it south 100 poles to a stone pile, south 50 west 163 poles to the place of beginning. The call in the patent to David Van Sickle is north 75 east 79 poles to a small Spanish oak and stone pile, thence south 100 poles to a stone pile, thence south 50 west 163 poles to the beginning.

(Mr. SINCELL:) The location of the David Van Sickle and Lewis Van Sickle patents is further objected to, because they are not located upon the plat, in accordance with the grants.

561st Q. Is there any difference in the manner in which you have located the Lewis Van Sickle and David Van Sickle tracts on the plat from the calls of those contracts in the patents?

A. There is. The line called for in the patent of David Van Sickle as run north 75 east 79 poles to a small Spanish oak and a stone pile, on or near the Maryland line is actually on the ground south 75 east 79 poles. The call in the Lewis Van Sickle patent stated as north 75 east 79 poles is also south 75 east 79 poles on the ground. The call in the Lewis Van Sickle patent above referred to as south 78 west 114 poles is actually north 78 west 114 poles, which appears to be an error in the description.

Excepted to on the ground that this location is an attempt to go behind the grant.

562nd Q. What reason have you for that location on the ground and the map?

A. The lines as shown to me and recognized by the parties
2829 holding, and upon which the fences were built were south east and north west 75 and 78 respectively.

563rd Q. So the present holdings of the parties conform to your location on the map? Is that correct?

Excepted to.

A. It is.

Excepted to.

564th Q. Did you run any reference lines in that locality?

A. At the end of 10,829.9 poles I ran reference lines as follows: south 73¼ 41.25 poles, south 72 east 51.6 poles to a Spanish oak

pointed out by C. F. Van Sickle as a corner of the Lewis and David Sickle tracts, and as standing in the Maryland and Virginia line. This point is indicated on the map by red letter and figure "H. 4."

565th Q. Is there a Spanish oak called for in the original patents at that point?

A. Yes, sir.

Exception to the question and answer.

566th Q. Will you read the call?

A. In the patent to David Van Sickle for 100 acres this Spanish oak is called for, at the end of the line north 75 east 79 poles. In the patent to Lewis Van Sickle for 120 acres above referred to, this Spanish oak is called for at the end of the line north 75 east 79 poles to a stone pile and small Spanish oak.

567th Q. And in the survey for 100 acres upon which that patent is based, how is that Spanish oak called for?

A. This point is called for in the survey for 100 acres at the end of north 75 east 79 poles to a small Spanish oak and stone pile on or near the Maryland line. Continuing the reference lines from the Spanish oak above mentioned north 32 east 44 poles, north
2830 45, 50 east 29.1 poles to a large white oak pointed out to me by Marshall Fike as a common corner to military lots 2997 and 2998.

568th Q. How is that point designated on the map?

A. That point is designated on the map by the letters "W. O."

569th Q. Have you laid down those military lots 2997 and 2998 with reference to that point?

A. I have. They are marked on the map, laid down on the map in broken lines enclosing the figures "2997" and "2998."

570th Q. And south of them you have laid down what military lot?

A. A. 2999.

571st Q. And that adjoins what Maryland grant on your map?

A. Adjoins a grant in Maryland called "Granary," as laid down on the map?

572nd Q. Now, did you locate any dwelling houses on the Van Sickle land?

A. I did. At the end of 10,852 poles I passed on my reference line four poles east of C. T. Van Sickle's barn. At the end of 10,864 poles on our line we passed six poles west of Van Sickle's house. This house and barn is indicated on the map by two small square dots above the name "Van Sickle." At the end of 10,942 poles on our reference line, we passed about 10 poles east of J. A. Fike's house. This house is indicated on the map by a small square dot under the name "J. A. Fike."

573rd Q. Going back to the Fearer tract of land, was there any one living on the land as located on your map?

A. There was. William Fear.

574th Q. Did you take a reference to his house?

A. Only approximately, at the end of 33 miles on our reference

line we passed about 80 poles westward of this house. This
2831 house is indicated on the map by a small square dot near the figures 50¼.

Exception to the approximation.

575th Q. Going on northward from the Van Sickle land, did you locate any tracts?

A. At 11,200 poles we set a 35 mile stake in Anthony's wood. At 11,386 poles we passed about six poles west of a house on the David Lewis tract now occupied by Elzey Van Sickle. This point is indicated on the map by a small square dot, and the name "D. Lewis." Beginning at the white oak pointed out by Marshall Fike as the corner of military lots 2997 and 2998, I ran as follows: north, at the end of 104.85 poles passed 1.45 poles west of a stone pile pointed out to me as I recollect by Marshall Fike as a corner of lots 2997 and 2996. This point is indicated on the map by red letter and figure "H 5." Continuing at the end of 265.1 poles crossed into McDermott's land as shown by Fike. At the end of 366.5 poles crossed line fence between McDermott and Levi Fike. At the end of 466.4 poles crossed line fence between Levi Fike and Taylor Unble. From this point I ran west 44.45 poles to a corner of Levi Fike, and Taylor Umble in Lewis's line, pointed out, as I recollect, by Marshall Fike as standing in the old state line. This point is marked upon the map by red letter and figure "H 6." Continuing, the main reference line, at the end of 539.5 poles crossed Taylor Umble's north line. At 686 poles to a point north of the Mason & Dixon line, thence south 84½ east 18.65 poles, south 1½ degrees west, 1.15 poles to a planted stone supposed to stand in the Mason & Dixon line. This stone is indicated on the map by a small square in the Mason and Dixon line with the word "Monument" above.

Excepted to.

2832 This monument is a square hewn stone, about fifteen inches square, four and one half feet high, hewn to flat pyramidal shape on top, standing on a stone sub-base, on what appears to be an old mound elevated perhaps eighteen inches, and has the following inscriptions: on the north side, "Pa. 1885, 552/10, M." on the west the letters "Pa." and "W. Va." with a vertical line out between; on the south the letters "W. Va." and "Md." with a vertical line out between; on the east the letters "Md." and "Pa." with a vertical line out between.

576th Q. Was that pointed out to you or any information given to you about it by anybody living there in the neighborhood?

A. My notes do not say that anybody did point it out. I believe somebody did, but don't know.

577th Q. I hand you a pamphlet, being the final report of the "Joint Boundary Commission on the parallel boundary between West Virginia and Pennsylvania printed in 1886, and ask you to file the same with your deposition, and call especial attention to pages 4 and 5.

Mr. SINCELL: The introduction of this paper is objected to be-

cause Maryland was not a party to said commission, and is in no manner or wise bound by the findings thereof.

A. I will do so, marked "Monroe Ex. No. 36.

578th Q. I hand you a certified copy of a grant by the Commonwealth of Virginia to Jacob Thomas, dated January 18th, 1837, for 100 acres, and will ask you to file the same with your deposition?

A. I will do so, marked "Monroe Ex. No. 37."

579th Q. Is that patent represented on your map?

A. It is. It is shown by solid black lines enclosing the words "Jacob Thomas" and figures "100."

580th Q. Was there any house on this tract of land?

A. There was.

2833 581st Q. Who was living in it when you were there?

A. Abram Thomas is my recollection—or Abraham, I have got it Abe Thomas here (referring to memorandum book."

582nd Q. Have you indicated that house on the map?

A. I have.

583rd Q. How.

—. I have indicated it by a square dot and the word "Thomas."

584th Q. How did you locate it?

A. That is located proximately from my knowledge of the position of the house with reference to the lines. I did not measure it. I did not take any accurate measurement.

585th Q. What reasons had you for locating that 100 acre Thomas survey in the manner in which you have done it?

A. My recollection is that Mr. Thomas pointed out his northeast corner to me as standing at the intersection of the line called the old Maryland line with the Mason & Dixon line. I am not positive of this, however.

Exception, to the answer as insufficient evidence of location.

586th Q. I hand you a certified copy of a patent from the Commonwealth of Virginia to Horace Ludington for 106 acres, dated November 29th, 1833, and ask you to file it with your deposition.

A. I will do so, marked "Monroe Ex. No. 38."

587th Q. Is that patent designated on your map in any way?

A. It is. It is laid down in solid black lines enclosing the words "Horace Ludington, 106. Now Lewis."

588th Q. Does it call for any other survey?

A. It calls for beginning at a stone, corner to Jacob Thomas survey of 100 acres, and running thence with the second line of the same reversed east 100 poles to a stake and a small Spanish oak.

2834 289th Q. Was there any house on that tract of land?

A. Yes sir.

590th Q. Who was living in it?

A. At the time we were there, Elzey Van Sickle was occupying the house.

591st Q. Is that the same house designated on the map by the word "D. Lewis."?

A. It is.

592nd Q. What are the common lines, if any, between that and the Jacob Thomas survey?

A. The common line in the tract patented to H. Ludington for 106 acres calls for beginning at a stone, corner to Jacob Thomas survey of 100 acres, and running thence with the second line of the same reversed east 100 poles to a stake and small Spanish oak. In the description of the Jacob Thomas tract of 100 acres the following calls appear: Beginning at a stone pile on the Pennsylvania line and supposed corner of the Maryland line and running thence with the Maryland line south 160 poles to a stake and small Spanish oak, and thence, leaving said line and running west 100 poles to a stone pile.

593rd Q. I hand you a patent from the State of Maryland to Thomas Hammond called "Hammond's corner" for 169½ acres dated September 5th, 1842, and will ask you to file the same with your deposition.

A. I will do so marked "Monroe Exhibit No. 39."

593*th* Q. According to the Deakins map of the military lots where would lot 2995 lie with reference to 2996?

A. It would lie directly north of it.

594th Q. Where would 2994, 2993, 2992, 2991, and 2927 lie?

A. Directly north——

595th Q. If then you have correctly located lots 2999, 2998, 2997, and 2996, where would this survey of "Hammond's Corner" lie?

A. That land lies west of these lots 2995, 2994, 2993, 2992, 2835 2991 and 2997.

597th Q. And where on your map—what territory would it cover?

A. It would cover the territory lying between the Jacob Thomas tract, Horace Ludington tract, Elijah Fike on the west, and the west line of the lot 2996 as laid down on this map produced northward.

598th Q. Do I understand you then to state that if the military lots are correctly located, this tract would lie west of those lots?

A. Yes, sir.

599th Q. What is the width of the Hammond's Corner?

A. 48 rods, I think, 48 perches.

600th Q. What is the width of the space represented by the line of the military lots extended and the Jacob Thomas survey as indicated on your map?

A. About 46 rods.

601st Q. Now, I notice on your map a tract of land designated as "Granary." Was that a Maryland or Virginia grant?

A. A Maryland grant.

602nd Q. I hand you patent from the state of Maryland to George French for 331½ acres called the Granary, dated January 10th, 1788, and I will ask you to file the same with your deposition in this case?

A. I will do so, marked "Monroe Ex. No. 40."

603rd Q. I call your attention to the copy of a map of Frances

Deakins of the Maryland military lots, and ask you whether he has located the Granary upon that map?

A. He has.

604th Q. How does the location of that map of the Granary correspond with your location of the Granary with reference to the military lot No. 2999?

A. They correspond.

Excepted to as insufficient evidence of the location of the
2836 Granary and lot No. 2999.

605th Q. Will you state any reasons you have for locating the tract Granary in the manner you have on your plat?

A. This tract is located by a reference line which I ran, beginning at the large white oak pointed out by Marshall Fike as the common corner of lots 2997 and 2998, and indicated on the map by the letters "W. O." south 281.4 poles to a stone pile pointed out to me by Marshall Fike as being in or near the Granary line. This point is indicated on the map by red letter and figure "H 7." I had no definite information at this time as to the beginning or other corners of the tract called Granary, and therefore laid it down on the map in conformity with the Deakins map.

Objected to as insufficient evidence of the proper location of the Granary tract.

606th Q. I will ask you if you were at the residence of Marshall Fike whilst you were making the survey?

A. I was.

607th Q. Is he the same person as William M. Fike?

A. Yes, sir.

608th Q. He states in his evidence heretofore taken in this cause that the bounded white oak is the north-west corner of military lot No. 2998, and that said white oak stands fifteen or twenty rods nearly due north—a little east of north of his house. What is your recollection as to what direction and distance the white oak you have located on your map was from the house of W. M. Fike?

Exception.

A. In running the reference line just referred to from the white oak at the corner of lots 2997 and 2998 south, I passed just
2837 east of Marshall Fike's house, and my recollection is it would be in the neighborhood of fifteen or twenty rods, although I took no measurement to the house.

609th Q. That is, the line runs south from the white oak?

A. The line ran south from the white oak passing just east of Marshall Fike's house.

610th Q. Will you locate on your map that house, placing it fifteen or twenty rods a little west of south of that white oak to conform to the testimony of Mr. Fike?

Objection by plaintiff to the witness marking his map as requested by counsel for the defendant.

A. I have indicated approximately on the map the position of Mr.

Fike's house, which point is indicated on the map by red letter and figure "H 8," by a small square dot.

The further taking of these depositions is adjourned until Friday next, July 27th, 1906, at the same place.

FRIDAY, *July 27th*, 1906,
2:15 o'clock p. m.

Examination of JULIUS K. MONROE resumed by Mr. PRICE:

611th Q. What tract of land have you located on your map just south of the Horace Ludington tract?

A. The John Fike survey of 388 acres and the Boger 80 acre tract.

612th Q. Does the Boger tract all lie south of the Horace Ludington?

A. No, sir.

613th Q. Just explain.

A. There seems to have been another survey cutting through, and taking the western portion of the Ludington survey,—in the Boger tract.

2838 614th Q. Why do you locate it on the western part of the Horace Ludington and south of it, as you have?

A. From the description in the surveys, which call for these corners and the corners of the Fike survey.

Objection to the method of location.

615th Q. Will you file the certified copy of the patent to Samuel Boger for that tract of land, with your deposition—80 acres?

A. I will, marked "Monroe Ex. No. 41." This survey upon which the patent is issued is dated September 11th, 1859. The patent is dated in 1860.

616th Q. What are the common lines between this tract and the Horace Ludington 106 acres?

A. The lines referred to in this survey which are common or practically so with those of the Ludington survey are as follows: Beginning at a white oak, corner of said Fike, Hagans and Scott, and with 7 Fike line reversed, south 39 west 66 poles to a black oak and stake, south 6 east 27 poles to three white oaks, south 65 east 70 poles to a white oak, east 48 poles to a stake. The calls in the Ludington 106 acre tract common with the Boger lines are as follows: West 94 poles to a white oak, thence north 65 west 76 to three white oaks, north 6 west 27 poles to a black oak, thence north 38 east 66 poles to a white oak.

617th Q. Now, you said that you located also south of the Ludington tract a tract of John Fike for 388 acres. Will you file a copy of the patent to John Fike with your deposition for said 388 acres?

A. I will, marked "Monroe Ex. No. 42." The patent is dated in 1848.

618th Q. Has that John Fike patent common lines with
2839 the Ludington and the Boger?

A. It has.

619th Q. Please give them.

A. The lines in the Fike tract common with the Ludington and Boger tracts are as follows: West 48 poles to a white oak, north 65 west 70 poles to three white oaks, north 6 west 27 poles to a black oak, north 38 east 66 poles to a white oak.

620th Q. I notice that the description of the Samuel Boger 80 acre tract calls at the end of the line north 79 east 8 poles to run to a stake in the Maryland line. Will you indicate on the map where you have represented that point to be?

A. I will. This point is indicated on the map by red letter H figure 9.

621st Q. And the next call is thence with same north 154 poles to a stake in Abram Thomas's line. Will you indicate a point on the map that represents the end of that 154 pole line?

A. I will. That point on the map is represented by red letter and figure "H 10."

622nd Q. Is that a corner of the Horace Ludington tract?

Exception.

A. It should be; yes, sir.

623rd Q. Did you locate on your map any patents south of the John Fike 388 acre tract?

A. I laid down on the map south of these tracts two other patents, William Robinson 528 acres, and William Robinson 100 acres.

624th Q. Will you file with your deposition a certified copy of that patent to William Robinson for 528 acres?

A. I will, marked "Monroe Ex. No. 43." This patent is dated August 30th, 1847.

625th Q. How is that William Robinson patent repre-
2840 sented on the map?

A. It is represented by solid black lines enclosing the words "William Robinson," and figure "528."

626th Q. Does it include the land covered by the names William and J. A. Fike and Isaac Van Sickle?

A. Yes, sir, and a part of that marked "George W. Van Sickle."

627th Q. Why did you locate that on the map as you have?

A. It has lines common with the Lewis Van Sickle patent and is located to adjoin.

Exception.

628th Q. Please give the common lines between those two patents.

A. The calls in the William Robinson tract common with the Lewis Van Sickle are given as follows: in said patent: "south 49 east 56 poles to a Spanish oak, corner to Lewis Van Sickle, and with his lines north 78 west 114 poles to a white oak and stone pile, south 20 west 38 poles to a chestnut, south 7 east 64 poles to a white oak near a drain. The lines in the Lewis Van Sickle patent for 120 acres common with the Robinson lines are as follows: south 78 west 114 poles to a white oak and stone pile, south 20 west 38 poles to a chestnut, south 7 east 64 poles to a white oak near a drain. The call above referred to as south 78 west 114 poles, I ascertained by survey on the ground to be north 78 west.

629th Q. Will you file with your deposition a certified copy of the patent to William Robinson for the 100 acres, which you have stated that you laid down on your map south of the John Fike 388 acres?

A. I will, marked "Monroe Ex. No. 44." The date of said patent is January 31st, 1848.

630th Q. How is that tract of land indicated on your map?

2841 A. It is indicated by solid lines enclosing the name "William Robinson," and the figures "100."

631st Q. Why did you locate that 100 acres where you have on the map?

A. In the description it has common lines with the Lewis Van Sickle 120 acres, and calls for that tract, and also has common lines and calls for the John Fike 388 acre tract and Robinson's 528 acre tract.

Objected to.

632nd Q. Will you give the common lines of this tract with each of the three tracts you have mentioned, designating them as you go along.

A. The lines common to the Lewis Van Sickle tract are as follows: South 49 east 56 poles to pointers, corner of the Lewis Van Sickle, and with his line reversed east 41 poles to a stone corner, thence with his line reversed south 5 poles. The lines in this tract common to the line of the William Robinson tract of 528 acres is south 49 east 56 poles to pointers. The line- of this tract common with the lines of the John Fike tract are as follows: West 100 poles to a stake, corner to John Fike, and with his line reversed north 77 west 52 poles.

633rd Q. I notice on your map apparently two tracts under the name of "Fear," one of 119 acres and one of 50¼ acres. I believe I have not asked you about the 50¼ acres. If there is a patent corresponding to that, will you file it with your deposition.

A. There was a survey made for Dan Griffith September 10th, 1833, and a patent issued to him dated 1836, for 31 acres which corresponds in its descriptions with that portion of the tract marked "Fear 50¼ acres" included within the solid black lines. The description of the tract is as follows:

2842 On a ridge between the waters of Little Sandy Creek and Buffalo Creek, north of the road leading from Jesse Spurgin to Selbysport, adjoining the Maryland line where said road crosses it, and is bounded as follows to-wit beginning at a black oak, supposed to be in or near the Maryland line, near the Selbysport road, and running thence north 11 east 20 poles to a birch, thence north 66 poles to two white oaks, thence south 75 west 86 poles to a white oak, thence south 30 east 76 poles to a locust, thence north 83 poles to the beginning.

Objection to this evidence of location, because it does not correspond and cover the Fear 50¼ acres laid down on the plat.

634th Q. Will you indicate on the map the point where you have fixed the beginning corner of that 31 acres?

A. I will. This point is indicated on the map by red letter and figure "H 11."

635th Q. The first time of the tract runs north 11 east 20 poles to a birch. Will you indicate the point on the map where that 20 pole line ends.

A. This line ends at the point indicated on the map by red letter and figures "H 12."

636th Q. The next line runs north 66 poles to two white oaks. Please indicate where that point is on the map.

A. This point is indicated on the map by red letter and figures "H. 13."

637th Q. I notice that the western line of the tract of land called "Granary" as located on your map No. 1, appears to be farther from the Michler line, which is designated the Fairfax meridian on Mr. Brown's map than it is on his map. Can you on your map indicate about where the Granary would be if it were located as it is
2843 on Mr. Brown's map.

A. I can. I have so located it, and the south west corner of it is indicated by the letter and figure "H 14" It is laid down in broken lines.

638th Q. I hand you a certified copy of a deed from William McKee and wife to George Teets, dated March 6th, 1876, and filed heretofore with the depositions in this cause, and marked "Ex. No. 11"; and I will ask you whether you have indicated that tract of land on your map in any way.

A. I have, by solid lines, enclosing the word "Teets?" and the figures "31½."

Objection to the introduction of this paper, because there appears to be no connection between it and the proprietary.

639th Q. Why do you locate that as you have on the map?

A. It has common lines with the Deal survey and the Spurgin, as laid down, and is therefore located to adjoin.

640th Q. Going down to the locality of the old Diadem survey, what, if any, Virginia patents have you located within and upon the boundaries of the Diadem?

A. I have laid down by protraction the John Summers survey of 200 acres, surveyed November 15th, 1835, and patented in 1837, a copy of which patent is filed herewith, marked "Monroe Ex. No. 45. Also a tract of 500 acres surveyed for William Gable January 16th, 1834, and patented to him the same year, copy of which patent is filed herewith, marked "Monroe Ex. No. 46. Also a tract of land containing 520 acres surveyed for Abram Jeffers and others January 15th, 1824, and patented to them in 1826, a copy of which is filed herewith marked "Monroe Ex. No. 47." Also a tract
2844 of land surveyed June 18th, 1834, for John and Calvin Crane, for 346 acres, and patented to them in 1836, a copy of which patent is filed herewith, marked "Monroe Ex. No. 48.

Objection to the location of the patents.

641st Q. How are those patents designated on the map?

A. They are designated on the map by "John & Calvin Crane 346," "John Summers 200," and "Gable 500."

642nd Q. Will you give the reasons for locating those patents on the map as you have?

A. These tracts are described with common lines, and as adjoining each other and are located for this reason as adjoining. Also the John Crane 491 acre tract calls for lines of the Gable tract, and the John Crane 776 acre tract calls for lines of the Summers tract, 200 acres.

643rd Q. What tract of land have you indicated as lying on your map, west of the Elder Spring 411 acres?

A. A tract of land patented to Samuel Boger for 50 acres surveyed March 1st, 1849, and patented the — day of ——, 1849.

644th Q. Will you file a copy of that patent with your deposition?

A. I will, marked "Monroe, Ex. No. 49."

645th Q. Why do you lay down that patent west of and adjoining the Elder Spring tract?

A. The eastern lines of the Samuel Boger 250 acre tract conform practically to the western lines of the Elder Spring tract. The lines which are practically common with the Elder Spring tract are as follows: North 11 east 147 poles, north 41 west poles, north 7 west 30 poles, north 39 east, 82 poles, north 20 poles, north 47 west 98 poles, north 31 west 40 poles, north 24 east 80 poles, north 80
2845 east 60 poles. The differences in bearings are accounted for by the magnetic variation allowed in running the lines.

646th Q. Will you file with your deposition in this case a certified copy of a patent to Jacob Guseman, on a survey October 12th, 1848.

A. I will, marked "Ex. No. 50."

Objection.

647th Q. Have you located that survey on your map?

A. I have.

648th Q. How is it indicated?

A. It is indicated by solid lines enclosing the name "Jacob Guseman 750."

649th Q. How is that location with reference to the location of the Maryland patent called Nonpariel?

A. It lies on the same territory, that is, a part of the Nonpariel.

650th Q. Will you file with your deposition a certified copy of a patent to Thomas Brown for 490 acres, dated in 1856, on a survey of November 23rd, 1855.

A. I will, marked "Monroe Ex. No. 51."

651st Q. Have you located that patent on your plat?

A. I have.

652nd Q. Where is it with reference to the Nonpariel tract and the Guseman survey?

A. It lies directly east of and adjoining the Guseman survey, and also on a part of the same territory covered by the tract called the Nonpariel.

653rd Q. Now, give your reasons for locating those two surveys, the Guseman and the Brown as you have.

A. The Brown survey is described as adjoining lands of David Parsons, Jacob Guseman and John T. Morris in the line of the John Hoye and Honore Martin survey of 3600 acres, and has a
2846 common line with the Guseman line and Hoye line.

654th Q. That is the same Hoye and Martin 3600 acre tract which you have located previously?

A. It is.

655th Q. Do the Guseman and Brown surveys call for beginning at the same point?

A. Both call for beginning at a white oak in David Parsons' line.

656th Q. Will you indicate on the map where that point is?

A. I will. This point is indicated on the map by red letter and figures "D 19."

657th Q. How is the survey to Thomas Brown of 490 acres indicated on the map?

A. By solid black lines enclosing the names "Nicholas Lee," 85 and 40 acres, and "F. Matheny and Thomas Brown 490 acres."

658th Q. I will ask you whether you know of a patent or survey to Parsons covering the territory adjacent to the Guseman and Brown surveys just mentioned?

Objected to.

A. O I do not know positively of such a survey. I have not found it yet.

659th Q. I hand you the original patent from the Commonwealth of Virginia to Jacob Crane for 514 acres, dated January 1, 1859, and will ask you what you know about that paper.

A. This paper was handed to me by J. M. Crane, who stated that it was one of William B. Crane's title papers.

Excepted to.

660th Q. Will you file a copy of that patent with your deposition, to be verified by the notary.

A. I will, marked "Ex. No. 52."

661st Q. Is that tract of land conveyed by that patent lo-
2847 cated on your map by you?

A. It is.

662nd Q. How is it designated?

A. It is designated by solid lines enclosing the name "Jacob Crane," surveyed March 10th, 1858, patented January 1st, 1859, with the figures "514."

663rd. Q. How did you locate that at the point you have?

A. It is described as adjoining the Deakins tract, and was thus located.

664th Q. Will you give the common lines between the two tracts?

A. The lines common to the two tracts are described as follows: Thence reversing seven lines of said Deakins 6,000 acre survey north 63 east 206 poles to pointers, north 85 east 91 poles to a locust and pointers, north 40 poles to pointers, north 30 east 36 piles, crossing the creek to a stone pile, north 80 east 90 poles to a white oak by a small drain, north 24 west 371 piles to pointers, north 114 poles to a white oak, thence leaving said 6,000 acres.

665th Q. I will ask you to file with your deposition a certified copy of a patent to Isaac Van Meter for 400 acres, dated 1788.

Objected to.

A. I will do so, marked "Monroe Exhibit No. 53."

666th Q. I will ask you also to file with your deposition a patent to Isaac Van Meter for 156 acres, dated 1786.

Objected to.

A. I will do so marked "Monroe Ex. No. 54."

667th Q. I will ask you to file with your deposition a certified copy of a patent to John Rodeheaver for 297 acres, dated in 1836.

A. I will do so, marked "Monroe Ex. No. 55."

2848 668th Q. If you have located that patent on your map, please state how it is designated?

A. Designated by solid lines enclosing the name, "John Rodeheaver" and the figures "297."

669th Q. Why did you locate that Redeheaver survey as you have?

A. This is located from a white oak stump, standing on White Oak Spring Run, where the Burchinal road crosses, pointed out to me as the beginning corner of this tract, as I recollect by Mr. Metheny.

670th Q. Who is he?

A. A man who lives there close. It is a well known corner in that country. Everybody knows that. I do not remember the man's name now. This white oak stump is indicated on the map by red letter and figures "D 20."

Objection, to the location.

671st Q. I will ask you to file with your deposition a certified copy of a patent to Jesse Ashby for 400 acres, dated the — day of ——, 1784.

A. I will so so, marked "Monroe Ex. No. 56."

672nd Q. Is that land as conveyed by that patent indicated on your map, and if so, state how?

A. It is indicated on the map by solid black lines, and enclosing the words "Jesse Ashby," and figures "400."

673rd Q. What surveys does it adjoin?

A. It adjoins the Bacorn, and the H. White.

674th Q. Give your reasons for the location of that at the point where it appears.

A. It is laid down from a point beginning at a cherry tree on the north side of a creek, and running east, etc. That point is indicated by red letter and figures "D 21." This point as I recollect

2849 was shown to me my either Wesley or William De Berry, and I have forgotten which, as the beginning corner of this tract.

Objection to the location.

675th Q. Are there any common lines between that survey and the Bacorn?

A. There are—two.

676th Q. What are they?

A. The survey of John Bacorn for 500 acres, dated in 1793 has the following calls; north 20 degrees east 40 poles to two cherry trees, corner to Jerry "Ashley's" land, thence with said Ashley's line east 116 poles to pointers, thence south 308 poles to another of said Ashley's lines to two cherry trees, thence leaving Ashley's line. In the Jesse Ashby survey of 400 acres are the following lines; Beginning at a cherry trees on the north side of the creek and running east 116 poles to pointers, south 308 poles to two cherry trees on the creek.

677th Q. I will ask you to file with your deposition a certified copy of a patent to Frances and William Deakins for 908 acres patented in 1785?

A. I will do so, marked "Monroe Ex. No. 57."

Objection.

68th Q. I will ask you to file with your deposition a certified copy of a patent to Frances and William Deakins for 354 acres dated, 1785.

A. I will do so, marked "Monroe Ex. No. 58."

Objected to.

679th Q. How are those Deakins tracts of 908 and 354 acres designated on your map?

A. They are designated by the word "Deakins," and the figures "908" and "354."

680th Q. I will ask you also to file with your deposition a certified copy of a patent to Henry White for 47 acres dated in 1852.

2850

A. I will do so, marked "Monroe Ex. No. 59."

681st Q. How is it designated on your may?

A. By solid black lines enclosing the words "H. White" and figures "47."

682nd Q. What reason had you for locating it as you did?

A. This tract is laid down from a corner on the ground pointed out by Garrett White, indicated on the map by red letter and figure "D1." The tract marked "Deakins 354" is located from the Henry White location, which calls for and adjoins this tract, having two lines in common with the same.

Objection to the location as irregular.

683rd Q. Has that White tract any common lines or corners with adjacent surveys? Does it call for any?

A. Yes, sir.

684th Q. What are they?

A. It has common lines and corners with the tract called on the plat "Deakins 354." The lines common to both these tracts are common in the patent to Henry White as follows: South 16 west 38 poles, crossing said creek to pointers in the Baldwin lines, and with the same reversed south 81 east 40 poles to the beginning. The beginning of the White tract calls for a maple, corner to Baldwin,

thence south 1 west 172 poles. Mr. White told me that Israel Baldwin at that time owned the Deakins 354 acre tract.

Exception to the statement made to the witness by Mr. White as to the ownership of the Deakins 354 acres.

685th Q. I hand you a certified copy of a patent from the Commonwealth of Virginia to John Hooker for 2251 acres, dated April 17th, 1788, and I will ask you to file the same with your
2851 deposition.

A. I will do so marked "Monroe Ex. No. 60."

686th Q. Is that patent designated on your map?

A. It is, by solid lines inclosing the name "John Hooker" and the figures "2251."

687th Q. Is that tract of land also represented on Mr. Brown's map?

A. It is.

688th Q. How does your location with reference to the Michler line and adjacent surveys correspond with the location of it by Mr. Brown?

A. It is substantially the same as that of Mr. Brown, both being located from the same point.

(Recess until 7:30 o'clock, P. M.)

7:30 O'CLOCK P. M.

689th Q. I hand you a certified copy of a patent to William Deakins, Jr., for 200 acres, dated November 6th, 1788, and I will ask you to file the same with your deposition.

A. I will do so, marked "Monroe Ex. No. 61."

690th Q. Have you located this patent on your map, and if so, how is it designated?

A. It is designated by solid lines, enclosing the words "William Deakins, Jr., 200."

691st Q. Why did you locate it at the point you have?

A. It has common lines with the 300 acre Ashby tract. It calls to adjoin and run with that tract.

692nd Q. Give the common lines between the two surveys.

A. In the Deakins survey the following calls occur: North 95 poles to two maples and a white oak, that being a corner to William Ashby's survey of 300 acres, and the end of the fifth line of the same, thence with said survey south 55 feet east 45¾ poles to a sugar tree, Spanish oak and ash, north 48 east 45½ poles to a white oak, sugar and pine, thence east 218 poles.

2852 693rd Q. Can you refer to the original survey upon which this patent was based?

A. I have a copy of the original survey.

694th Q. Is there any difference in the description of the land in the original survey from the description in the patent?

A. There is. In the patent it calls for beginning at a white oak marked with ten notches standing on a north line which is run from the north branch of the Potomac, and between the seventh and tenth mile tree on the same. In the survey the calls are the same, except that the beginning is between the ninth and tenth mile on the line.

695th Q. What is the date of the survey?

A. September 27th, 1787.

696th Q. Can you file a copy of that survey with your deposition.

A. I will, marked "Monroe Ex. No. 62."

Excepted to.

697th Q. Will you indicate on your map where that beginning point is?

A. The beginning point is indicated on the map by the red letter and figure "C 7."

698th Q. The next to the last line of this patent runs from a white oak, sugar and pine, thence east 218 poles to intersent a north line from the beginning. Will you indicate on the map the point where this intersection with the north line is indicated.

A. I will. This point is indicated on the map by red "C 8."

Exception to the question and the answer.

699th Q. I hand you a certified copy of a patent to Wil-
2853 liam Ashby for 50 acres, dated August 1st, 1851, and I will ask you to file the same with your deposition.

A. I will do so, marked "Monroe Ex. No. 63."

700th Q. Is that 50 acres laid down on your map?

A. It is.

701st Q. Where, and how is it designated?

A. It is laid down by solid lines, enclosing the name "William Ashby" and the figures "50."

702nd Q. It appears to be located between the William Ashby 300 acres, and the Williams Deakins, Jr. 200 acres. Why did you so locate it?

A. This tract of land is described in the patent as beginning at the end of 177 poles on the given (last) line of William Ashby 300 acre tract, thence south 43¼ west 176 poles to two dead cherry trees, two maples, three spruce pines on the west bank of Yough river, and east 158 poles from a pine marked as a corner, the line crosses Wilt's corner, at the end of 30¼ poles, and the road leading from Wilt's to Martin's at the end of 150 poles to a pine marked "W. A." and crosses Yough, thence south 82 east 115 poles, recrossing said Yough to pointers, corner to Buckdale in the Maryland line, and with the same north 142 poles to the beginning. This tract is laid down with its beginning at the end of 177 poles on the given line of said Ashby survey as it is located on the map.

Objected to because the description does not conform to that in the grant.

703rd Q. Has it a common line with the William Ashby 300 acres?

A. Yes, sir, the first line of the 50 acre tract is south 43¼ west. The last line of the Ashby 300 acre tract or the given line is north 43¼ east.

2854 704th Q. This 50 acre Ashby patent calls for its second line to run south 82 east 115 poles, recrossing said Yough river to pointers, the Buckdale corner in the Maryland line. Will

you indicate on your map where that point calling for the Buckdale corner in the Maryland line is.

A. That point is indicated on the map at red "C 9."

705th Q. Is that a corner of the Maryland Buckdale tract as it is located on your map?

A. It is.

706th Q. I hand you a certified copy of a patent to Frances and William Deakins for 215 acres, dated June 10th, 1794, and will ask you to file the same with your deposition.

A. I will do so, marked "Monroe Ex. No. 64."

Objection.

707th Q. If that tract of land is laid down on the map, please indicate how it is designated.

A. It is laid down enclosed in solid lines, with the words "F. & W. Deakins," and the figures "215."

708th Q. Please give your reasons for locating it on the map as you have.

A. This survey for 215 acres is described as adjoining the lines of the Osborne survey, and the Deakins 2000 acre survey, and is thus laid down with reference to these tracts.

709th Q. What common lines or corners has it with that Osborne survey?

Exception.

A. The common lines of the Deakins 215 acres with the Osborne are as follows: Beginning at two white oaks and dogwood and maple and running 57 poles west to the first line of Osborne's survey
2855 and with it south 66 poles to a maple, west 30 poles to pointers, north 34 poles to a maple at the end of the twelfth line of the aforesaid Deakins survey of 2,000 acres.

710th Q. Has it any common lines with the Deakins 2000 acres, and if so, what are they?

A. The common lines in the 215 acre tract with those of the Deakins 2000 acre tract are as follows: South 24 west 220 poles to a walnut and maple, south 5 east 267 poles to pointers. In the copy of the 2000 acres, which I have, the line calling for south 24 west is marked 120 poles instead of 220 as in the 215 acre tract, but the calls are for the same objects, a white walnut and maple at the end of the line.

Exception to the answer.

711th Q. Is the Deakins 2,000 acre patent located on your map?

A. The lines of it are indicated by solid black lines, and the words "F. & W. Deakins," and the figures "2000."

712th Q. This Deakins 2,000 acres calls for certain lines of the Osborne 660 acre tract. Will you state whether you have located it with reference to those calls of the Osborne.

A. I have, yes, sir.

713th Q. I hand you a copy of a patent to Wilson, Byrne, and Morris for 600 acres dated February 1st, 1854, a certified copy of

which is filed with the answer in this cause, marked "Defendant's Ex. No. 14," and I will ask you if that tract of land is indicated on your map, and if so, how?

A. It is laid down by solid black lines enclosing the words "Wilson, Byrne and Morris," and the figures "600."

714th Q. This survey calls to run north 31½ east 414 poles to a corner of F. — W. Deakins survey of 2000 acres, thence north
2856 6 west 70 poles, east 125 poles to the Maryland line, with the same south 514 poles to the beginning. Will you indicate on the map the corner of the F. & W. Deakins survey 2000 acres called for in this patent.

A. This point is indicated on the map by red "A 9."

715th Q. Will you indicate on the map the point where the line running east 125 poles to the Maryland line is represented as striking the Maryland line?

A. I will. This point is indicated on the map by red "A 10."

716th Q. The survey calls to begin at pointers on the Maryland line, corner to John Hoye's 72 acres. Will you indicate that point on your map.

A. This point is indicated on the mpa by red "A 11."

717th Q. I hand you a copy of a patent from the Commonwealth of Virginia to John Hoye for 72 acres, dated December 31, 1844, a certified copy of which is filed with the answer in this cause, as Ex. N., No. 12, and I will ask you if that 72 acres is laid down on your map?

A. It is.

718th Q. How is it indicated?

A. Indicated by solid black lines enclosing the word- "John Hoye," and the figures "72."

719th Q. Where is it on the map with reference to the Wilson, Byrne and Morris 600 acres?

A. Immediately south and in a line with the eastern boundaries.

720th Q. Will you indicate on the map the point on the John Hoye 72 acres, which is called for as the beginning of the Wilson, Byrne and Morris survey?

A. This point is indicated on the map by red "A 5."

721st Q. The John Hoye 72 acres calls to begin at a large
2857 maple and pine on the bank of the north branch of the Potomas river on the Maryland line. Will you indicate that point on your map?

A. This point is indicated by red "A 12."

722nd Q. I hand you a patent from the Commonwealth of Virginia to Frances and William Deakins for 6310 acres, dated October 31st, 1797, and I will ask you to file the same with your deposition.

A. I will do so, marked "Monroe Ex. No. 65."

723rd Q. I also hand you a certified copy of a patent from the Commonwealth of Virginia to Frances and William Deakins for 9,000 acres, dated June 21st, 1794, and I will ask you to file the same with your deposition.

Objected to.

A. I will do so, marked "Monroe Ex. No. 66."

724th Q. Are these two surveys of 6310 acres and 9000 acres laid down on your map. If so, how are they indicated?

A. They are laid down on the map in solid lines enclosing the words "F. & W. Deakins" 6310 and "F. & W. Deakins 9,000." The northern portion of the 6310 only has been laid down on account of lack of space.

725th Q. The 9000 acres last mentioned calls to begin at a bounded sugar tree standing south 4¼ east 60 poles from Fairfax stone at the head of the North Branch of the Potomac. Will you indicate on the map where that bounded sugar tree is intended to be represented.

A. This point is indicated on the map by red letter and figures "A 13."

726th Q. The fifth call of this 9000 acre patent is west 52 poles to the Maryland line. Please indicate on the map the point where this line terminates on the Maryland line.

A. This point is indicated on the map by red letter and figures "A 14."

2858 727th Q. The next call is with it—that is, with the Maryland line—north 80 poles to a maple marked "1," standing at the head of one mile on the Maryland line run from Fairfax stone aforesaid. How is that point indicated on the map.

A. By a small circle and figure "1" and letter "M," black.

728th Q. The next call is thence north 200 poles. Will you indicate on the map where the end of the 200 pole north line is as represented on your map?

A. This point is indicated on the map by red "A 15."

729th Q. Returning to the patent for the 6310 acres to Frances and William Deakins, the first line calls to run north 18 west 840 poles to two pines and a fir tree at the end of the nineteenth line of the Deakins tract of 9000 acres. Will you indicate on the map the point where said first line strikes the end of the 19th line of the Deakins tract?

A. This point is indicated on the map by red "A 16."

730th Q. Now, from that point what common lines has this tract of 3610 acres with the 9000 acres?

A. The following lines in the 3610 acre Deakins tract are common with those of the Deakins 9000 acre tract: North 46 west 109 poles to a "furr" and pine, north 13 east 175 poles to 5 beeches, north 21 east 504 poles to a birch, east 44 poles to a beech and furr, south 47 east 330 poles to a beech, north 45 east 55 poles, north 180, north 15 east 260 poles, north 20 west 160 poles, north 20 east 50 poles to a large cherry tree and chestnut, north 39 east 140 poles to a beech and pine, north 73 east 124 poles to the Maryland line as run from Fairfax stone fixed for the head of the North Branch.

2859 731st Q. How is the point indicated on your map where the line running north 73 east 124 poles strikes the Maryland line?

A. This point is indicated on the map by red "A 15."

732nd Q. The next line run with the Maryland line north 760 poles to a chestnut tree marked for the fourth mile tree on said

line, and also to the line of Deakins tract of 215 acres. Will you indicate on your map where the end of that line is.

A. This point is indicated on the map by a small circle and black "4M."

733rd Q. What was that "4M" put there for on your map originally?

A. The end of four miles from the Fairfax stone on our reference line.

734th Q. Is it actually four miles from the Fairfax stone according to your running and measurement?

A. At the end of 1284.6 poles on our reference line from Fairfax stone we passed 85/100 poles west of a stake and pointers, supposed to be the point where the four mile tree stood. This is 4.6 poles north of the proper point according to our measurement.

735th Q. I hand you copy of a patent to Hillery Griffin and Frederick Wotering for 200 acres, dated September 1st, 1851, a certified copy of which is filed with the defendant's answer in this cause marked Defendant's Ex. N. No. 13, and I will ask you if that tract of land is laid down on your map, and if so, how it is indicated.

A. It is. It is indicated by the black lines enclosing the names "Griffin and Wotering," and the figures "200."

736th Q. This survey contains a call north 78 west 23 poles to pointers, corner to Hoye's 72 acres. Will you indicate on
2860 the map where this line strikes the Hoye 72 acres?

A. This point is indicated on the map by red "A 17."

737th Q. The next calls are as follows: Thence with five lines of the same, with the Hoye 72 acres, reversed, north 25 west 72 poles to pointers, north 44 west 22 poles to a maple, north 7½ west 80 poles to pointers, north 25 west 29 poles to a pine, north 59 east 10 poles to a double lynn. I will ask you whether those calls correspond to five lines of the Hoye 72 acres?

A. They do as to the distances and objects called for, but in one instance the calls in the Wotering patent are north west, whereas they are north east in this tract. That is on the 44 degree line.

Exception to conflicting with the grant.

738th Q. I hand you a patent to John Hoye for 3,000 acres dated December 31st, 1844, and ask you to file the same with your deposition.

Objected to.

A. I will do so, marked "Monroe Ex. No. 67."

739th Q. Is that patent located on your map?

A. The southern eastern and northern lines are laid down, and it is indicated on the map by the words "John Hoye" and the figures "3000."

740th Q. This survey calls to run with the William Ashby 500 acres, the Robert Hooker survey of 2251 acres and the Frances and William Deakins survey of 6000 acres. Will you state whether you have located it on your map in its relation to those tracts in conformity to the calls of the patent?

A. It *is* has been laid down in that way. This tract also calls for

the Deakins 200 acre survey, the William Ashby 300 acre
2861 survey, the John Hoye 500 acre survey, and the Henry Lauer survey of 200 acres. The Lauer survey is now marked William Ashby 200 acres survey, and has been laid down in conformity with the common lines of these tracts.

The further taking of these depositions is adjourned until to-morrow morning at the same place.

SATURDAY, *July 28th*, 1906.

Present: The same counsel as yesterday.

JULIUS K. MONROE'S examination resumed by Mr. PRICE:

741st Q. I hand you a certified copy of a patent granted by the State of Maryland to John Hoye for a tract of land containing 130¼ acres, called "Maryland," dated January 23rd, 1823, and will ask you to file the same with your deposition?

A. I will do so, marked "Monroe Ex. No. 68."

Excepted to.

742nd Q. Is that the same tract called "Maryland" about which you have already testified as to its location?

A. It is.

743rd Q. In the evidence of Mr. W. McCulloh Brown heretofore taken in this cause, he was asked the following question: "Did you locate by actual survey any point or points in what is termed the old Deakins line, and if so, please state what point*ed* you located, and how they are designated upon the plats." In answer to that question, Mr. Brown stated that the first point which he located in what is termed the old line, was a white oak pointed out to him by Lloyd Dawson, which is designated on his map by the black letters
2862 "W. C." and stated that that point stood by latitude 35, 697 feet north of Potomac spring, as he calls it, and 148.3 feet east of the Fairfax meridian, as he terms the Michler line, as I understand it. Can you locate on your map the corresponding point where that white oak tree indicated by "W. C." on Mr. Brown's map stands?

A. I can. This point on map No. 1 is indicated by a circle with the black letters "W. C."

744th Q. By what means do you ascertain that the point which you have designated there corresponds with the W. C. on Mr. Brown's map?

A. By measurement and by the fact that it stands in a line south of a place pointed out to me as the north east corner of said Dawson's tract.

745th Q. Taking Mr. Brown's figures north 35, 697 feet from the Potomac spring, where would that point be on your map?

A. At the point marked black "W. C."

746th Q. A point 35, 697 feet north of Potomac spring would be where?

A. A point 35,697 feet north of Potomac spring would fall in the meridian line run north from the Potomac spring, ran by Mr. Brown.

747th Q. Can you indicate it on your map?

A. I can. It is indicated by red letter and figures "C 10," and stands at the end of six miles and 243 rods in the meridian line referred to.

748th Q. Does the point which you have indicated on your map by the black letters W. C. and circle stand 148.3 feet east of the Fairfax meridian?

A. It does.

749th Q. And due east on the ground from the point
2863 marked on the map "C 10"?

A. It does.

750th Q. The second point which Mr. Brown locates is a thorn stump pointed out to him by Frances Martin, indicated on his map by the black letters "W D," and he states in his testimony that this point is 151.4 feet north of Potomac spring, and 165.6 feet east of the Fairfax meridian. Can you indicate on your map the corresponding point to this point W D on Mr. Brown's map?

A. I can. This is indicated on map No. 1 by black W D and a circle.

751st Q. How do you arrive at that?

A. This point stands due east of a point in the meridian of the West Branch of the Potomac river at the end of 38,151.4 feet, and 165.6 feet east of the Fairfax meridian.

752nd Q. The next point indicated in the old line by Mr. Brown is a fence pointed out to him by Peter F. Nine, shown on his plat by black letters W E, which point he states is 42,276 — north of Potomac spring, and 219 feet east of the Fairfax meridian. Will you designate upon your map the point corresponding to the point W E on Mr. Brown's map?

A. This point is indicated on the map by black letters W E and a small circle.

753rd Q. Do you arrive at that by taking Mr. Brown's measurement which I have given?

A. I do.

854th Q. The fourth point in the old line located by Mr. Brown is a white oak tree, which he states was pointed out by Julius K. Monroe, standing on Stahl's hill, and shown upon his plat by the black letters W. F. This point he states is 44,420 feet north of
2864 Potomac spring and 259.7 feet east of Fairfax meridian. Will you indicate that point on your map corresponding to the point W. F. on Mr. Brown's map?

A. This point is indicated on the map by a small circle, and black letters W. F.

855th Q. How did you arrive at that point?

A. This point is located by the measurement as given by Mr. Brown, as well as measurements taken by myself on the ground.

856th Q. The fifth point located by Mr. Brown as being in the old line pointed out to him is a fence pointed out to Mr. Brown by J. W. Jones, and shown on his plat by black letters W G, and he

states that this point is by latitude 77,685.8 feet north of Potomac spring, and 1128.4 feet east of the Fairfax meridian. Will you indicate on your map a point corresponding to the point W G on Mr. Brown's map?

A. This point is indicated on the map by a small circle, and the black letters W G.

857th Q. How did you ascertain that point?

A. This point is located from measurements given by Mr. Brown, and corresponds with the points to which I took a reference line on the same line designated on the map by the red letter D and figure 5.

858th Q. The sixth point located by Mr. Brown as being in the old line is a cherry tree which he stated was pointed out to him by Samuel Teets, and shown upon his plat by the black letters W I, and in the copy of Mr. Brown's testimony which I have before me now, the perpendicular distance of this point is stated to be 1574 feet east of the Fairfax meridian. The latitude is not given, a blank space being left in the testimony by a mistake of the stenographer. I will ask you if you accompanied Mr. Brown at the time he made the locations of this point?

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A. I was not with him, but I copied his notes of that location.

859th Q. According to the copy of his notes which you have what was the latitude of this point WI from the Potomac spring?

A. I have got a note of where he crosses my line, but I cannot give you the latitude from the Potomac spring. My notes show that this perpendicular line crossed my reference line 44.3 feet north of a stake standing at the end of 7302 poles from the Fairfax stone. At 1547 feet on this perpendicular line Mr. Brown ran north 41 feet to the cherry tree mentioned.

860th Q. From these figures then or otherwise, can you locate on your map a point corresponding to the point W I on Mr. Brown's map?

A. I can. This point is indicated on the map by a small circle and the black letters W. I.

861st Q. Is that point 1547 feet east of the Fairfax meridian?

A. It is.

862nd Q. Can you give approximately the distance by latitude that this point stands north of Potomac spring as designated by Mr. Brown?

A. I can. I will say that it stands due east of a point which is approximately 21 miles and 150 rods north of the Potomac spring, as located by Mr. Brown?

863rd Q. The seventh point located by Mr. Brown, as shown him to be in the old line, he states to be a point within the Diadem near the 4th line of said tract, where a red oak tree formerly had stood, which was pointed out to him by Ethbell Falkenstine as a point in the old line. This point is shown on his plat by the black letters W. K. and he stated that its latitude is 128,896 feet north of Potomac spring, and the perpendicular distance from

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[† In pencil in copy.]

the Fairfax meridian to it is 2495.6 feet. Can you indicate on your map the corresponding point to this point W K on Mr. Brown's map?

A. I can. This point is indicated on the map by a small circle, and the black letters W K.

864th Q. Is this located according to Mr. Brown's measurements as applied to your map?

A. It is.

865th Q. The eighth point located by Mr. Brown on his map is an old fence pointed out to him by Taylor Friend as a point in the old line, and shown upon his plats by the black letters W. S, which point he states is 160,287.5 feet north by latitude of Potomac spring, and 2976 feet east of the Fairfax meridian. Will you indicate the corresponding point on your map to this point on Mr. Brown's map?

A. I will, by a small circle and black letters W. S.

—. The ninth point located by Mr. Brown is a fence pointed out to him by Isaac Myers as being in the old line shown upon his plat by the black letters WL, and he states that this point is 164,716.8 feet north of Potomac spring and 2971.1 feet east of the Fairfax meridian. Will you indicate the corresponding point on your map to this point WL on Mr. Brown's map? Is that point designated on your map in accordance with the figures given by Mr. Brown?

A. It is, and it is marked by a small circle, and the black letters WL.

866th Q. The tenth point indicated on Mr. Brown's map is a fence pointed out to him by Samuel M. Fike, as a point in the old line shown on his map by black letters W M. This point he
2867 states is 172,249.7 feet north of the Potomac spring, and 2957.5 feet east of the Fairfax meridian. Will you indicate a corresponding point on your map to this point W M on Mr. Brown's map.

A. I will. This point is located on the map by a small circle, and the black letters W M.

867th Q. Is this according to Mr. Brown's measurement?

A. Yes, sir.

868th Q. Now, the eleventh point indicated by Mr. Brown is a point designated on his plat by black letters W Z, which he states was pointed out to him by A. J. Thomas as a point in the old line, it being 183,079.7 feet north of Potomac spring, and 2970.6 feet east of the Fairfax meridian. Will you indicate a corresponding point on your map to this point W Z on Mr. Brown's map?

A. This point is indicated on the map by a small circle, and the black letters W Z.

869th Q. Is this point on the Pennsylvania line?

A. It is very near it.

870th Q. Going back to the neighborhood of the Fairfax stone, what is the distance from the Fairfax stone to the point where you cross the Potomac river.

A. 242 poles.

871st Q. Did you from that point where you cross the river survey the river, and its main branches above there.

A. I was with Mr. Brown when he surveyed it. I did not myself.

872nd Q. Did you make any measurement of the length of the branch leading from the Forks to the Fairfax stone?

A. I did.

873rd Q. How is the point at the forks of the river there designated on Mr. Brown's map?

2868 A. By black "Sta. 31."

875th Q. Will you designate it on your map by the same figures?

A. I will. It is so designated on the map.

876th Q. From the point 31, how did you measure the branch leading to the Fairfax stone?

A. I measured with a 100 foot standard steel tape, as nearly in the center of the bed of the stream as possible.

877th Q. Who constituted your party in making that measurement?

A. Mr. James A. Sincell and James Burrell were chainmen, and Mr. Richard T. Browning accompanied us.

878th Q. Was that measurement made during the time that Mr. Brown was doing the surveying on behalf of the State of Maryland in this cause?

A. It was.

879th Q. And these men you have mentioned—who were they?

A. They were men belonging to Mr. Brown's party, that were furnished by him at my request.

880th Q. What duties did they perform in connection with his survey?

A. Mr. Browning usually acted as chainman, and Mr. Sincell and Mr. Burrell usually as rodmen in Mr. Brown's party.

881st Q. What was the length of that branch from "Sta. 31" to the Fairfax stone, according to your measurement made as you have stated?

A. The length of this branch from the point at the forks of the river marked station 31 to the Fairfax stone by my measurement is 6730 feet, and to the left hand spring going up 6744 feet.

882nd Q. Had this branch been previously measured by

2869 Mr. Brown under his direction?

A. It had.

884th Q. In what way did he make his measurements?

A. He ran an angle line on the south and east bank of the stream from station 31 to the stone, and measured it.

885th Q. Did he measure from angle to angle of his angle line?

A. He did.

886th Q. And it was along the south bank of the stream you say?

A. South and eastern bank of the stream.

887th Q. Is that the left of the stream going up?

A. Yes, sir.

888th Q. What was the distance as measured by Mr. Brown in that manner?

A. I took his notes for that. I do not know. 6418.8 feet, as given by Mr. Brown.

889th Q. In measuring that branch in the center of the bed of the stream, did you use the compass at all?

A. I did not.

890th Q. Was this measurement taken under your immediate supervision and direction?

A. It was.

891st Q. How was the center of the stream determined?

A. Measuring the center of the bed of the stream as nearly as we could, or as nearly in the center of the water in the stream as we could.

892nd Q. Was there water in the stream at the time you measured it?

A. Yes, sir.

893rd Q. What time in the year was it?

A. In August, 1897.

2870 894th Q. Did you also measure the north fork leading to the spring which Mr. Brown has called the Potomac spring?

A. I did.

895th Q. In what way was it measured, and by what party?

A. Measured in the same manner as the Fairfax stream, and by the same party?

896th Q. What was the length of that stream, that branch, as ascertained by you according to that measurement?

A. 6419 feet.

897th Q. Had this branch been previously measured under the direction of Mr. Brown?

A. It had.

898th Q. In what way had he measured it?

A. He measured in an angle line, beginning at the station 31, on the southwestern bank of the stream.

899th Q. Is that the left hand going up?

A. It is.

900th Q. And would it be on the outside of the curve?

A. Yes, sir.

901st Q. And in measuring the branch leading to the Fairfax stone on the left hand side going up, would that be on the inside of the curve?

A. It would.

902nd Q. What was the distance of this stream leading to the spring called the Potomac spring by Mr. Brown as Mr. Brown measured it, from station 31.

A. From station 31 to the head of the stream as measured by Mr. Brown, it was 6477.7 feet.

903rd Q. According to your measurements in the center of the stream, which was found to be the longer stream?

A. The stream leading from the Fairfax stone.

2871 904th Q. How much longer than the other?

A. 325 feet.

905th Q. In arriving at that difference, do you measure to the spring in each case?

A. Yes, sir.

906th Q. Did you adopt any plans to ascertain the comparative size of said streams?

A. I had a detailed measurement between the banks of the streams 300 feet each way from station 31, at the forks of the streams.

907th Q. What did you do?

A. Took detailed measurements of the width between the banks of the streams.

908th Q. Please explain how that was done?

A. I ran reference lines from a common point at or near station 31, 300 feet up the Fairfax branch and 300 feet up the Potomac branch, and 300 feet down the main stream, and from these reference lines I measured to the right and left banks of the stream the width, at every ten feet along the reference line and at right angles to the reference line.

909th Q. In measuring the width of the stream, what plan of rule did you adopt? How did you determine the banks of the stream?

A. I measured to the natural bank of the stream on each side as nearly as it could be determined on the ground?

910th Q. Have you given the result in detail of those measurements in your reports?

A. I have.

911th Q. Did you make a map or sketch showing the result of these measurements?

A. I did.

2872 912th Q. Will you produce it and file it with your deposition?

A. I will. This map is marked "Map No. 4, showing location and dimensions of North Branch of Potomac at Junction of Forks, Julius K. Monroe."

913th Q. What do the red lines on this map indicate?

A. They indicate the position of the reference lines with reference to the streams.

914th Q. Where those reference lines are entirely outside of the stream, how did you make the measurement?

A. Measured at right angles to the first bank of the stream, and then to the opposite bank of the stream.

915th Q. And where the reference line is in the stream, how did you measure?

A. Measured to the bank on the left side, and to the bank on the right side of the reference line.

916th Q. Is this map a correct representation of the measurements as taken by you?

A. It is.

917th Q. Did you make any effort to measure the volume of water flowing in each one of those branches?

A. I did.

918th Q. Please designate what you did in that effort.

A. I built a dam across the stream, and constructed a rude trough or weir of bark, and attempted to run the water into a vessel and get

comparative measurements of the flow of each stream. The appliances we had, however, were crude, and we were unable to get satisfactory measurements, on account of the vessel being too small to get accurate measurements of the time of filling the vessels, on account of the short time it took to fill the vessels.

919th Q. Your experiment then as to that matter—was
2873 it successful and satisfactory?

A. It was not.

920th Q. Did you take notice yourself of the comparative volume of water flowing from those two forks?

A. I did.

921st Q. Did you notice any difference in the volume of water in one fork from the other? If so, which appeared to be the larger stream?

A. In my judgment, the larger flow of water was in the Fairfax branch at this point.

Exception to the above question and answer.

922nd Q. Was there much or little difference between the apparent volume of water in the two streams?

A. In my judgment there was from a fourth to a third larger volume in the Fairfax stream.

Excepted to.

923rd Q. Referring again to the map No. 4, showing the location and dimensions of the north branch of Potomac junction of forks, I will ask you if this — a correct representation of the location and junction of the two forks as they flow?

A. It is.

924th Q. Does the north fork running to the Brown monument go into the stream in the manner indicated on this map?

A. It does.

925th Q. Did you run any other portions of the head waters of the Potomac river besides the two streams and that portion extending from the due north line to the forks of the stream?

A. I ran the branches of the stream flowing northward and to the east of the Fairfax stone from the junction of the river to the head springs, as indicated on the map.

926th Q. Does the river fork northeast of the Fairfax stone
2874 in the manner indicated on the map?

A. It does.

927th Q. Did you run the river from that fork to the meridian line, running north from the stone?

A. I did.

928th Q. All I want to know is, is it correctly represented and laid down on your map?

A. It is.

929th Q. Did you carefully run, and have you detailed measurements of the South Fork of the North Branch of the Potomac, lying east of the Fairfax stone and running northward, as you have stated?

A. I have.

930th Q. Have you embodied the details of those runnings in your report?

A. I have not.

931st Q. Why not?

A. Because of the volume of them, the great number of lines. I didn't think it was necessary. I could do so, if it was thought necessary.

932nd Q. Are those streams laid down on the map according to the actual survey that you made of them?

A. They are.

933rd Q. You may state how it was laid down on the map? By what method?

A. These streams were laid down on a preliminary map on a much larger scale, that of 200 feet to the inch, and carefully protracted. They were then reduced by means of a pantagraph to the scale corresponding to the map, and laid down in that manner on the map.

934th Q. Is that an accurate method of reduction from a larger to a smaller scale?

2875 A. It is.

935th Q. Were they measured and laid down in the same manner that the branches leading to the Fairfax stone and to the other spring according to Brown's measurement were measured and laid -own?

A. They were.

936th Q. And to the same scale:

A. To the same scale; yes, sir.

937th Q. I notice a representation of the West Virginia Central railroad—ought to be the West Virginia Central and Pittsburg—how was that located?

A. We noted in running these streams different points at which the railroad crossed them. The railroad is then laid down from point to point approximately.

938th Q. The points at which the railroad crosses the streams—are they accurately laid down on the map?

A. They are.

939th Q. Did you run the main body of the Potomac river farther down the stream than the point indicated on your map?

A. I did not.

940th Q. Did Mr. Brown run it?

A. He did.

941st Q. Did you accompany him?

A. I was with him most of the time, and copied Mr. Brown's notes, had access to his notes of his running.

942nd Q. And you could from those notes lay down the river from the junction of the Laurel run on your map, could you?

A. I could.

943rd Q. I believe I would like to have you do that?

A. I will do so.

944th Q. Did you survey any of the headwaters of the
2876 stream lying south of the Fairfax stone, and running southward?

A. I did.

945th Q. In what manner did you survey that?

A. In the same manner as those eastward from the Fairfax stone.

946th Q. Have you the detailed measurements of those streams?

A. I have.

947th Q. Have you given them in your report?

A. I have not.

948th Q. For the same reason that you left them out of the other?

A. Yes.

949th Q. Will you please file the same as an exhibit with your report.

A. I will file with my report as an exhibit the courses and distances and details of the survey of the headwaters of the Cheat river, and also of the line between Grant and Tucker counties, West Virginia.

950th Q. Did you lay down the streams as you surveyed them upon the map?

A. I did.

951st Q. State whether the streams running southward as represented on the map are correctly laid down according to the actual survey that you made?

A. They are.

952nd Q. And are they laid down in the same manner that you laid down the Potomac waters?

A. They are.

953rd Q. What waters are these south of the Fairfax stone?

A. They are tributary to the Cheat river.

954th Q. And the Cheat river runs into what other stream?

A. The Monongahela river.

955th Q. And that runs into the Ohio and Westward?

A. Yes.

956th Q. Now, is the Backbone mountain correctly represented?

2877 A. It is approximately so.

957th Q. To what extent is it accurate?

A. The crest of the Backbone mountain bears about north 35 east The Michler line—the Michler monument stands on the crest of the Backbone mountain in the Fairfax meridian, and Dr. Bauer's station on the meridian from the west branch of the river stands on the summit of the Backbone mountain. The course of the mountain is almost in a direct line between these two points.

958th Q. Are those points designated on your map by the words "Monument No. 1," on the Michler line, and the figures 495.9 on the meridian run by Mr. Brown?

A. It is.

959th Q. I notice you have laid down on your map a mountain running south-eastward from the Backbone mountain near the Fairfax stone. What does that represent?

A. It represents the spur of the Backbone mountain lying between the headwaters of the Potomac and Cheat rivers.

960th Q. Is that accurately laid down?

A. It is approximately laid down from the Backbone mountain to the point south of the Fairfax stone, and from that point southeastward, it is laid down by the bearings and distances of the county line between Tucker and Grant counties, West Virginia, which calls for the dividing ridge.

(Noon recess.)

2 O'CLOCK P. M.

Examination of J. K. MONROE resumed by Mr. PRICE:

961st Q. Were you present on the survey when Mr. Brown was in charge at the time they ran the north fork of the north branch leading up to the point which he has called Potomac spring?

2878 A. I was.

962nd Q. Did you find anything at or near that spring that indicated that there had ever been a corner for the state boundary there?

A. I did not.

963rd Q. No monuments of any kind?

A. No, sir.

964th Q. Any marked trees?

A. No, sir.

965th Q. Were you with his party when they ran the meridian line north from that point to the Pennsylvania line?

A. I was.

966th Q. Along that line, did you find anything to indicate that a state boundary line had ever been run there or recognized there?

A. I did not.

967th Q. I notice that you have laid down on your map apparently a large number of tracts of land, with names and figures, along and in the neighborhood of that meridian line run by Mr. Brown? What do they indicate?

Exception.

A. They indicate tracts of land held along that line.

968th Q. The names indicate what?

A. The owners of the land at that time?

969th Q. And the figures?

A. The number of acres contained in each tract.

970th Q. Do these names indicate the names of the people you found living on these tracts of land?

A. Yes, sir.

971st Q. When was that line run?

A. In 1897.

972nd Q. Where did you get the data from which you have platted these tracts of land on the map?

2879 A. Most of the data was secured from deeds in the possession of the property owners along the line. Other portions of it was secured from land records in Preston county and in Monongalia county, and old survey records which I got in Charleston and elsewhere.

973rd Q. What were your instructions from the attorneys for the

State of West Virginia with reference to accompanying Mr. Brown along that line?

A. My instructions were to accompany Mr. Brown, an- take such notes of his work, and of the land owners and other matters along the line as would be pertinent to the work being done.

974th Q. Did you go to the houses of the people as you went along?

A. I did, and I think to nearly every house in the territory lying between the two lines almost.

975th Q. The deeds which you copied—were they deeds that are on record in the clerk's office here?

A. In most cases—nearly all cases. A few of the deeds I copied had never been recorded, and a few had never been re-recorded.

976th Q. Some of them had not been re-recorded sin-e the fire when the court house was burned in 1869?

A. I presume so, since the endorsement on the backs of them indicated that they were recorded in books that are not now among our records, books Nos. 1 to 24, which were destroyed in the burning of the court house.

977th Q. In addition to the information gained by being with Mr. Brown as you have stated, have you any other personal acquaintance with the people and the state of affairs between the Michler line and the line run by Mr. Brown?

A. I knew a good number of the people along that terri-
2880 tory before I was with Mr. Brown.

978th Q. You knew them before that time?

A. Yes, sir.

979th Q. Had you done any surveying in that territory at any time—before or since?

980th A. Yes, I have.

981st Q. What surveying?

A. I have subsequently surveyed the Wilson, Byrne & Morris tract, and a number of lines on the Backbone mountain, and the headwaters of Horseshoe run, and some lines for the Preston Lumber Company, shown on this map, and some lines for Dennis Glover in reference to the Bacorn tract.

982nd Q. Any other surveying?

A. I believe, so far as I recollect that is all right along that line—all I recall at this time at any rate. I did also run some of the lines of the 6,000 acre tract at the time I ran lines for Mr. Glover. I had the lands of the Oakland Coal & Coke Company surveyed, too. That was done under my direction.

983rd Q. From all the sources of information which you have what have you to say as to which state, Maryland, or West Virginia, the people living between the Maryland line, and the line Mr. Brown ran, adhere and bear allegiance?

A. State of West Virginia.

984th Q. And which state exercised jurisdiction over that territory?

A. So far as I know, the state of West Virginia.

985th Q. The title papers which you examined of all the people along that line run by Mr. Brown—were they West Virginia titles or Maryland titles:

A. West Virginia titles.

986th Q. Do you know of anybody living west of the Michler line who claims allegiance to the State of Maryland?

2881 A. I do not.

988th Q. Do you know of any persons living between the Michler line and the old state line who in any way adhere to the State of Maryland?

A. Yes.

989th Q. Who are they?

A. Samuel Faulkner, and a man named Bittner, I think, and Ethbell Falkenstine, to my recollection, are the only persons living between those lines claiming allegiance to the State of Maryland.

990th Q. What tract of land does Faulkner live on?

A. Samuel Faulkner lives on the Elder Spring tract.

991st Q. What tract of land does Bittner live on?

A. I think Mr. Bittner—Jeremiah Bittner, also lives on the Elder Spring. I am not sure about Mr. Bittner, but that is my recollection.

992nd Q. What land does Ethbell Falkenstine live on?

A. He lives on the Diadem—the Crane lands.

993rd Q. Has he any other title except the Diadem to his land?

A. He has no Diadem title that I am aware of.

994th Q. Where does he derive his title from?

A. He got his title from Samuel Crane's heirs, I think.

995th Q. Was Crane's title derived from the State of Virginia?

A. Yes, sir.

996th Q. Has Falkenstein always adhered to the State of Maryland?

A. I understand not. He told me he had not?

997th Q. His title deeds were first recorded, were they not, in Preston County?

A. Yes, sir.

998th Q. And how long since he transferred them to Oakland, Maryland?

2882 A. That I cannot say. I do not know (examines papers). The deed from Crane's heirs to Ethbell Falkenstine for 200 acres of land, that upon which he lives, is recorded in Book 31 on page 21, of the records of Preston County, West Virginia. The date of the deed is November 7th, 1866.

999th Q. Is this the same Ethbell Falkenstine whose deposition was taken in this cause by the State of Maryland?

A. It is.

1000th Q. With reference to his line, where is the point where a red oak tree stands that he pointed out to Mr. Brown as being in the old State line? How is it with reference to his land and his house.

A. It is north-east of his house, and is in or very near his eastern

boundary line. It is designated on the map by a small circle and black "WK."

The further taking of these depositions in adjourned until Monday next, July 30th, 1906, at the same place and between the same hours.

2883 MONDAY, *July 30th*, 1906.

Present: The same counsel as Saturday.

JULIUS K. MONROE'S examination resumed by Mr. PRICE:

1001st Q. You have prepared a map marked "Map No. 1." Will you state in general terms what that map is intended to represent.

A. That map No. 1, represents the Michler line, the line farther west run by Mr. Brown, designated on his map as "Potomac line," and the lines of the original grants from Virginia, as well as the subdivisions of those grants on the Virginia side of the line, and a number of tracts patented in Maryland lying on both sides of the old line as claimed by West Virginia, and different points in the old state line as claimed by citizens along the line.

1002nd Q. Does it also show the reference line run by you from the Fairfax stone to the Pennsylvania line?

A. It does. That line is laid down from the Fairfax stone northward, and to the east of the line designated the Michler line, by a fine dash line, with numerous circles and figures adjacent, marking different references, stakes, mile stakes, etc.

1003rd Q. How is the Michler line represented?

A. It is represented by a somewhat heavier solid line from the Fairfax stone to the Pennsylvania line.

1004th Q. How are the termini of the Michler line indicated?

A. Indicated on the south by a square marked "Fairfax stone," and at the north by a small circle in the Mason & Dixon line marked "Michler Monument."

1005th Q. How is the meridian line run by Mr. Brown in this case indicated?

A. It is marked by a somewhat heavier solid line laid down from the point at which Mr. Brown planted a stone marked "Potomac, 1897," due north to the Pennsylvania line. The point at the beginning of the line designated on the map No. 1 by the
2884 words "Brown Monument." Small circles are marked on this line at the end of each mile with the numerals 1 to 34, inclusive, opposite; also small triangles at different points on this line representing astronomical stations. The point at which this line intersects the Pennsylvania line is marked black "PM."

1006th Q. At my request you have prepared a map marked Map No. 2. Will you state what it is intended to represent.

A. Map No. 2 is intended to represent only the outlines of the original grants from the Commonwealth of Virginia, and the points designated on Map No. 1 as standing in the old Maryland line. Also the Maryland grants lap onto the Virginia grants, as well as the lines representing the Michler and Brown meridians, and the reference line which I ran in 1894; also the roads and streams shown on Map No. 1.

1007th Q. At my request you have also prepared map No. 3. Will you state what that is intended to represent.

A. Map No. 3 is intended to represent the eastern boundary of Virginia land grants as held by citizens of West Virginia as the old state line, and the several points located in said line as shown on Maps Nos. 1 and 2, and also the Fairfax meridian or Michler line as laid down on maps Nos. 1 and 2, as well as the streams and roads shown on the former maps.

1008th Q. Does it also show where the property lines of the different tracts are at present held, according to the way you have located them?

A. It does also show the sections of the property lines where the same intersect the eastern lines of the properties, together with the names of the property owners.

1009th Q. In running your reference line in 1894, what checks and references, if any, did you take from time to time with
2885 the Michler line?

A. I ran reference lines to all the known points on the Michler line.

1010th Q. What was that for?

A. That was for the purpose of getting an accurate line to lay down our property lines from. All the tracts, etc., laid down with reference to this reference line are laid down from the measurements thus taken.

1011th Q. So that the tracts that are laid down upon the ground are laid down with reference to the actual location of the Michler line upon the ground, as well as with reference to the reference line you ran?

A. They are. This reference line was laid down on the map between each of these points that I ran tie lines to the Michler line monuments and stations on, so as to eliminate as much as possible the error that might come from a needle line.

1012th Q. I hand you a certified copy of a patent from the Commonwealth of Virginia to Levi Beatty, dated March 20th, 1785, for 276 acres, and will ask you to file the same with your deposition.

Excepted to.

A. I will do so, marked "Monroe Ex. No. 68."

1013th Q. Have you located that tract of land upon the map?

A. Yes, sir; it is laid down on the map.

1014th Q. How is it represented?

A. By solid black lines enclosing the words "Beatty 276."

1015th Q. Give your reasons for laying it down on the map the place you have.

A. The patent to Jacob Crane for 514 acre- previously laid down on this map has the following call: North 114 poles to a
2886 white oak, then leaving said 6000 acres and running north 20 west 25 poles to a white oak, a corner to said Beatty survey, and with the line of the same south 10 west 34 poles to a chestnut and pointers, a corner to said Hawk survey, etc. This line is a

common line with the Beatty tract, and is therefore laid down to adjoin in that manner.

Excepted to by plaintiff.
Examination in chief concluded.

2887 Cross-examination of JULIUS K. MONROE by Mr. SINCELL:

1st Q. The Michler monument at Fairfax Stone was shown to you as the point where Lieutenant Michler started his survey, wasn't it?

A. It was.

2nd Q. How is the line designated as the Michler line laid down upon your map in reference to the Fairfax stone?

A. It is laid down as beginning at the Fairfax stone.

3rd Q. And running what direction?

A. Running north.

4th Q. How is the same line laid down upon Mr. Brown's map, in relation to the Fairfax stone?

A. It is laid down in the same manner.

5th Q. Are not both the Michler line and the Brown line straight lines in both cases upon the maps?

A. They are.

6th Q. Isn't the Michler line accurately run and marked upon the ground at numerous points along the meridian?

A. It is comparatively correct. Of course the monuments, as Michler states in his report are not exactly on the points. They are comparatively so.

7th Q. You have stated that you began your survey at the Fairfax stone and ran a line which was a reference line on the magnetic course of three degrees and forty minutes east, using the needle of the surveyor's compass. Did you continue this same course to the Mason and Dixon line?

A. I did.

8th Q. In taking references from points in your line, did you constantly use an allowance of three degrees and forty minutes to the right?

A. I did.

9th Q. State what the annual change of the magnetic needle to the west is?

2888 A. About three minutes.

10th Q. What authority did you have for assuming that Deakins had run a line from the Fairfax stone with a compass in 1789, and if you did make this assumption, that he had run it at the point of the needle.

A. No authority except that those old surveys were usually run at the point of the needle.

11th Q. Running with an allowance of three degrees and forty minutes to the right, do you claim that your reference line retraced the Deakins line continuously from the Fairfax stone to the Mason and Dixon line?

A. I do not.

12th Q. In cases where land grants were run originally with the compass at the point of the needle, how do you reproduce their lines at a subsequent date?

A. A certain allowance is made for magnetic variation. This is estimated. In all my experience I have never found a case where the computed magnetic variation and the actual variation of the points coincide.

13th Q. What is the computed variation from year to year?

A. It is now running about three minutes per year?

14th Q. And that would be one degree in how many years?

A. About one degree in twenty years.

15th Q. As a competent and practical engineer, what method would you adopt if you were called upon to locate a boundary line between states or counties.

Objection to the question.

A. Well, it depends upon what kind of a boundary line I was expected to locate. I would expect to receive instructions as to the kind of boundary line, and the method of surveying.

16th Q. If you were called upon to locate a permanent boundary line between states, what method would you adopt in locat-
2889 ing the line?

Objection.

A. If it were a straight line, I should adopt an astronomical line.

17th Q. Did you ever locate the boundaries between any counties in West Virginia or elsewhere?

A. I began to at one time.

18th Q. What boundaries did you start to locate?

A. I began on the boundary between Monongalia and Preston counties.

19th Q. You have never completed that work?

A. I did not.

20th Q. What method did you adopt in that running?

A. We used a transit, the fore and back sight method, for the reason that at the different points on the ground, the description called for a straight line between those points.

21st Q. You have stated in chief that a line run by the needle of the compass, and a line based on astronomical observations, would not correspond, owing to magnetic declination. When you began your survey at the Fairfax stone in 1894, did you know the magnetic declination of that point?

A. I did not.

22nd Q. Did you know the declination at or near the point shown upon your plat designated the Lauer Hill?

A. I did not.

23rd Q. Did you know it at the Mason and Dixon line at that time?

A. I had it approximately. I took the magnetic declination of Cranesville.

24th Q. When did you take that?

A. I will have to refer to my notes. It was in August,
2890 1904.

25th Q. That was during the progress of the surveys in this case?

A. It was the following season after I ran this reference line.

26th Q. Was any representative of the State of Maryland with you at the time you took that de-lination?

A. There was not.

27th Q. Was any notice given to the State of Maryland that you intended to take that de-lination?

A. I do not think there was.

28th Q. What was the occasion of your taking the magnetic declination of Cranesville in August, 1895?

A. Just merely to satisfy myself about the matter. That matter is not reported. It was an outside matter.

29th Q. Then it was not done in connection or with reference to this case?

A. No: it was not.

30th Q. Do you know the magnetic declination now by observations or from readings on the Michler line?

A. There were a number of them taken on the lines, I think, while we were running, but I do not recall just what they were now.

31st Q. Did you not at the same time during the progress of the Maryland surveys in this case read the declination from a transit at the Fairfax stone?

A. It is quite likely I did, I do not recall, though, I expect I did.

32nd Q. Did you not take a reading of the declination at a point 273 feet north of the Michler monument on the Mason and Dixon line during the progress of Maryland's survey in this case?

A. I will have to refer to my notes.

(Noon recess.)

2891 (*Noon* recess.)

Cross-examination of JULIUS K. MONROE resumed by Mr. SINCELL:

33rd Q. Did you not take a reading of the declination at a point 273 feet north of the Michler monument on the Mason & Dixon line during the course of Maryland's survey in this case?

A. I will have to refer to my notes. I did: on February 7th, 1898.

34th Q. What did you find the declination to be at that point?

A. Three degrees and forty-seven minutes.

35th Q. Can you now state what the declination was in October, 1897, at the Michler monument at Fairfax stone?

A. My recollection is that that was three degrees and three minutes.

36th Q. Then the difference in declination between these two points is, as you have stated, forty-four minutes, is it not?

A. Yes, sir.

37th Q. You have stated that you did run a straight line with the compass in 1894, between the Fairfax stone and the Mason & Dixon

line, as you have also stated that the difference in declination between these points is forty-four minutes. Is it not a fact that if the magnetic declination changes, and that you run your line with a uniform degree, that two or more points at varying distances apart in your line, would not be points of similar triangles with a common angle at the Fairfax stone?

A. I do not remember having stated that I ran a straight line. If I said so, I did not intend to say so.

38th Q. What kind of a line did you run?

A. I ran a continuous line.

39th Q. Did you run a straight line between the points
2892 mentioned?

A. I did not.

40th Q. If you wish to run a reference line with a compass as accurately as possible, perpendicular to a meridian line, and you knew the declination of the meridian at that point, would you not apply it?

A. I would.

41st Q. You have stated that the transit was invented in 1827. Do you mean to imply that prior to that time, there was no instrument in use which would trace a line more accurately than a compass needle.

A. I do not.

42nd Q. What is the difference between a transit and a theodolite?

A. The telescope in a transit transits or revolves while in a theodolite, it does not.

43rd Q. Is it not a fact that the Mason & Dixon line and the Michler line were both established with the theodolite.

A. I presume they were.

44th Q. And is it not also a fact that the theodolite was invented long prior to 1827?

A. It is.

45th Q. Where not the observations made and many points established by the State of Maryland in this case in the course of her surveys with the theodolite, and not with the transit?

A. It is a fact.

46th Q. Did you not see, and were you not acquainted with the instruments employed by the State of Maryland in determining and prolonging the meridians in this case?

A. I did, and I was acquainted with them.

47th Q. Were those instruments not as accurate as could be obtained for this work?

2893 A. They were.

48th Q. Weren't the two meridians carefully and accurately run from point to point?

A. They were, in my judgment.

49th Q. Is there any more accurate and practical method known than was pursued by the State of Maryland in making her locations in this case?

A. Did you mean on the line—on the meridian?

50th Q. Yes, sir; in making all the locations she made, especially with reference to these meridian lines?

A. As to the meridian lines and reference lines, the methods employed were accurate and practical. As to the property lines, they were located in the usual manner, by the needle.

51st Q. You have stated in chief that Dr. Bauer determined the Fairfax meridian and the meridian to the west on behalf of Maryland in this case, and marked these meridians on the various mountain tops and was occupied about three months in the work. Is it not a fact that Mr. Brown ran the intermediate points of these meridians, and if any error did occur in said running, it was checked up at the points fixed by Dr. Bauer and all the intermediate stakes set in line?

A. That is a fact.

52nd Q. Is it not a fact that as Maryland had determined the declination of the several points of the meridians all along the lines, Mr. Brown had as a check the reading of the declination from the transit needle——

A. He had.

53rd Q. You have stated that the diurnal variation of the compass needle is as much as fifteen minutes often during the day. Grant that the morning and afternoon variation was only
2894 ten minutes, what would be the difference apart at the ends of three miles if one were run in the morning and the other in the afternoon?

A. In my deposition I stated that very rarely the diurnal variation was as much as fifteen minutes, that only once in my recollection having occurred in my practice. If such a thing should occur that the diurnal variation should be as much as a ten minutes between morning and evening and remain so during the entire day of the running of the line three miles long in the morning and evening, which would be a very unusual thing the difference apart of these two lines would be approximately fifty feet.

54th Q. How do you arrive at that result?

A. One minute at a mile would be about 1.75 feet, I believe, one and one-half to one and seventy-five hundredths feet, and ten minutes it would be about seventeen and a half feet, and for three miles it would be about fifty feet. That is roughly speaking. That would be a very unusual case, however, in magnetic work.

55th Q. Then you would ascertain the difference by multiplying the tangent of the angle by the distance, would you not?

A. Yes, sir.

56th Q. You have stated in chief that he crossed the Potomac River at the end of 242 perches, beginning at the source of the river, whose general course in north-east. How is it that you crossed the river?

57th A. The river rises at the Fairfax stone and flows in a northwesterly, thence in a northerly course, thence in a northeasterly course until it crosses this line.

58th Q. Did you locate the river west of the line where you crossed it?

2895 A. I laid this down from Mr. Brown's notes of the survey. I was present when Mr. Brown ran.

60th Q. Then you adopted Mr. Brown's location of the streams west of your line, did you not?

A. I did; laid it down from his survey.

61st Q. You have stated that no one pointed out to you the beginning of Military Lot No. 1101, and you have located the same upon your map at the end of 314.08 poles north of the Fairfax stone. Is that a correct location of said military lot according to the original courses and distances and calls, as contained in the original certificate of award for said lot?

A. This point is laid down on my map opposite the end of 314.08 poles on my lines or on this reference line, measured horizontally.

62*th* Q. According to the certificate of award for said lot where does the lot call to begin with reference to the Fairfax stone?

A. In the certificate of award it calls for beginning at a bounded hemlock marked at 1100, standing one mile north from a stone fixed by Lord Fairfax for the head of the North Branch of the Potomac River.

63rd Q. And on your map you locate its beginning at the end of 314.08 poles north of Fairfax stone. Does that location correspond with the original grant of said lot, as you have just read it?

A. It does with the exception of a slight discrepancy in the measurement, which frequently occurs in such things.

64th Q. What is the discrepancy in the measurement?

A. About six rods. My measurements were taken horozontally, and these were probably run on the ground—one measured on surface measure, I mean, which would account for this dis-
2896 crepancy, I should judge.

65th Q. You simply assume that the original measurement was on the surface of the ground do you not?

A. I presume so, yes, sir—rather than assume.

66th Q. Then do you still say that your location gratifies the call in the original grant?

A. What do you mean by the word "gratifies"?

67th Q. Why, agrees with it?

A. Why, practically so, inasmuch as I believe that to be the corner of lot No. 1101.

68th Q. Did any one point that spot out to you as the corner of lot 1101?

A. I do not recollect certainly about that.

69th Q. What authority had you for laying down upon the map the John Hoye 72 acre tract granted December 31st, 1844, in the manner in which you did?

70th. A. Mr. George Mosser pointed out the beginning corner of the Wilson, Byrne and Morris tract to me, and this tract has common lines with that tract, calls for the same objects, and is therefore laid down to adjoin that tract.

71st Q. If, in point of fact Lot No. 1101, calls to begin at a point one mile north of the Fairfax stone, and you have fixed said beginning in your map at a point north 314.08 perches north of Fairfax

stone, and if the John Hoye 72 acres survey depends for its true location upon the proper location of said military lot, do you think that you have properly located on your map said 72 acres tract?

A. I do not understand that the Hoye tract calls in any way for the military lots.

72nd Q. Will you look at the patent for the 72 acre John Hoye survey, and state what it says with reference to this lot, if anything.

2897 A. This patent does not mention the military lots. (Reads from direct examination.) It does necessarily adjoin it, but does not mention it in the body of the paper.

73rd Q. Did any one point out to you upon the ground the hemlocks standing opposite your line at the end of 515 perches and 744 perches respectively shown at red A 2 and red A 3, as being in any state line?

A. Did not.

74th Q. Is it not common in making surveys in almost any section of that country to find trees marked in the manner you have stated you found these to be?

A. It is where they are property lines.

75th Q. In making the ordinary survey in cases like that, is it not true that the lines of different surveys of the same tract of land made by different surveyors hardly ever coincide?

Objection to the question?

A. They sometimes do not coincide, but it is not customary to remark a line on account of the failure to coincide.

76th Q. But do not some surveyors make a practice of remarking lines when they resurvey a tract of land?

A. I have known an instance or two where they did, but they are few. I do not call a man who would do that a surveyor.

77th Q. Did any one point out to you on the ground the chestnut oak shown at red A 4 on your map?

A. I think this was noted from my own observation. I do not recall that any one pointed it out.

Q. If said chestnut oak was not pointed out to you by any one, by what authority did you fix it as a corner of a tract of land?

2898 Objected to unless the attention of the witness is called to what tract of land it is a corner of.

A. In the survey of the Wilson, Byrne & Morris tract it was found that there was a lap between that title and the Stalnaker tract. This point was fixed as the corner of this lap by running certain lines of the Stalnaker tract, and was agreed to by the Loar heirs. The corner was standing, however, when I first passed it.

78th Q. The survey to which you have just referred was not made in connection with this case, was it?

A. No, it wasn't, it was subsequent. This point, however, was noted in my original survey when I passed it, and was supposed to be a corner of the Loar tract at that time.

79th Q. But as a matter of fact, you did not know at that time that it was a corner of that tract, did you?

A. I was not sure of it.

80th Q. Was there any call in the Wilson, Byrne & Morres patent for the chestnut oak shown at red A 4?

A. There was not. It simply calls for the Maryland line.

Counsel for the State of Maryland here moves to strike from the plat the location of military lot No. 1101, the John Hoye survey of 72 acres, and the Wilson, Byrne & Morris survey of 600 acres, for the reason that the same have not been located according to the calls contained in the original grants therefor, and because the same were not pointed out to the witness on the ground.

81st Q. Is the point Red A 4, shown on your map in your reference line?

A. It should be a little east of the reference line, on account of the scale, it may appear to be almost in it, or quite. Red A 4 is 1.4 east of my reference line.

— Q. Is the point Red A 6 shown on your map in your
2899 reference line?

A. It is actually 2.1 poles to the east of the line.

83rd Q. Is the point Red A 7 shown on your map in your reference line?

A. Red A 7 is 1.65 — east of the reference line.

84th Q. Is the point Red A 8 shown on your map in your reference line.

A. That point, Red A 8 is 2/10 poles east of the reference line?

85th Q. Is the point Red B 1 shown on your map in your reference line?

A. This point is 85/100 poles east of the reference line.

86th Q. Where is the beginning of the Mt. Pleasant tract shown upon your map with reference to the Michler line?

A. It is very nearly in the Michler line.

87th Q. How did you say the beginning of the Mt. Pleasant tract is indicated upon your map?

A. By red letter B, figure 2.

88th Q. Mt. Pleasant is a Maryland grant, is it not?

A. It is.

89th Q. Daniel Gneggy, who pointed out the beginning of said tract to you, hold his part of the same under the Maryland title, does he not?

A. I think he holds under the Covent Garden title.

90th Q. That is also a Maryland tract, is it not?

A. It is.

91st Q. How does it lie with reference to the Mt. Pleasant tract, as you have that tract located on your map?

A. It lies south and east of that tract—south and west of it.

92nd Q. Is it not a fact within your knowledge that the Mt. Pleasant tract, as you have located the same upon your map, is all held under the Maryland grant?

2900 Objection to the question.

A. So far as I know, it is.

93rd Q. Did any one point out to you on the ground the planted stone standing 25 perches west of the end of 2714 perches on your reference line?

A. I do not recollect that this stone was pointed out directly. My recollection is that Simon D. Whetsell referred to a stone standing at this point as being in the line of the Offutt tract.

94th Q. Did you locate any of the original corners of the Goff 1000 acres, 868 acres and 500 acres patents upon the ground?

A. I did not locate an original corner, but I did locate a white oak corner pointed out to me as being in the original line of the Goff 500 acres, and also a cherry tree, an original corner of the Walt Shaffer tract in the western boundary of the 500 acre tract. These corners were pointed out to me by W. A. Shaffer, who owns the tract marked T. Shaffer 108 on the map, and whose title papers run back to the Goffs, who originally took up the land.

95th. Q. When did W. A. Shaffer point out to you the white oak and the cherry, to which you have referred?

A. That was in October, 1899.

96th Q. Was any representative of Maryland present at the time?

A. Mr. Brown was with me on October, 16th, when I began taking these reference lines, but I am not now sure whether he was with me at this time or not. I think he was.

97th Q. Did you at that time run any of the lines of the three tracts mentioned by actual survey upon the ground?

A. I ran the southern line of the Deakins 200 acre tract
2901 from a point 96 poles south of a corner of the Ashby 300 acre survey eastward.

98th Q. But did you run any of the lines of the Goff tracts upon the ground at that time?

A. Not as a Goff tract.

99th Q. Have you at any time during the progress of the surveys in this case run any of the lines of those three tracts?

A. Only except as stated while running the lines from the white oak to the cherry.

100th Q. Is that the line of the Deakins 200 acre tract which you have mentioned?

A. No, sir.

101st Q. When did you run the line from the white oak to the cherry?

A. That was in October, 1899.

102nd Q. Who assisted you in making that location?

A. — D. W. Beavers, Charles Fowler, Charles Minear, James Neville and Eli Mosser.

103rd Q. You say that that was in October, 1899?

A. Yes, sir.

104th Q. How is the white oak about which you have testified mentioned—or designated upon your plat?

A. By a small circle and red letter and figure C 11.

105th Q. How is the cherry shown upon your map?

A. The cherry is designated by a small circle and red C 12.

106th Q. Were the remaining lines then of the Goff 500 acre tract you have laid down by protraction for illustration upon your map?

A. I have.

107th Q. And none of the lines or corners of the Goff 1000 acres and 868 acres respectively were located by actual survey upon
2902 the survey?

A. None except those points indicated along the eastern boundary.

108th Q. But you made no survey from those points to determine the true location of said tracts, did you?

A. No, sir, I did not.

109th Q. And you have simply protracted those patents upon your map?

A. They have been protracted and joined up to a patent south of that which is located on the line.

Counsel for the State of Maryland here moves to strike from the map the Goff 1000 acres, 868 acres and 500 acre surveys, as not being located upon the ground, and to strike from the record the testimony relating to such locations.

110th Q. Did you locate the sugar shown upon your plat at red C 3 by actual survey?

A. I did.

111th Q. In order to determine the location of that point upon the ground, what surveys did you make?

A. At the end of 3278.7 poles on my reference line, I ran west 24.1 poles to a bounded sugar which is indicated on the map by red C 3.

112th Q. Did any one point out that sugar to you on the ground?

A. My recollection is that Mr. Peter F. Nine pointed it out to me as the corner of Eelshine. Some one did.

113th Q. Have you any note in your book as to his having pointed that tree out *ot* you?

A. I have not.

114th Q. And you are simply depending upon your recollection for the statement which you now make?

A. Yes, sir.

2903 115th Q. Did you locate military lots numbers 316, 317, and 318 on the ground according to their original certificates of award?

A. I did not.

Counsel for the State of Maryland here moves to strike from the map the defendant's location of military lots numbers 316, 317, and 318, because the same are not located according to their original certificates of award.

116th Q. Did you locate the Royal Charlotte tract on the ground according to the patent therefor?

Question objected to, for the reason that it requires the witness to

determine the legal proposition as to what is the proper method of locating the Royal Charlotte, and the same objection is made to the question that was asked the witness about the location of the military lots 316, 317 and 318.

A. I did not.

117th Q. You were present at the time Mr. Brown located the Royal Charlotte patent, were you not?

A. I was.

118th Q. He located it by actual survey upon the ground, did he not?

A. He did.

119th Q. The beginning of said tract was pointed out to him by a witness produced upon the ground, was it not?

A. It was, is my recollection.

120th Q. Will you please look at the certificate of military lot No. 316, and state where it calls to begin.

A. Lot 316 calls to begin at the end of 122 perches on the third and last line of the tract of land called Royal Charlotte.

121st Q. In locating military lot No. 316 upon the ground,
2904 did Mr. Brown obey that call, and begin the location of said lot at that point?

Objection to the question, because it asks the witness to determine the legal proposition as to whether Mr. Brown obeyed a call.

A. My recollection is that Mr. Brown only set a stake at that point.

122nd Q. And began the survey from there?

A. I do not believe he ran out those lots. (Refers to memorandum book). He did not run them out the first time.

123rd Q. My question is, in locating military lot No. 316 upon the ground, did Mr. Brown obey that call and begin the location of said lot at that point?

A. He simply set a stake as the beginning corner as he surveyed the Royal Charlotte.

124th Q. Did he set that stake at the point called for on the third line of the Royal Charlotte as the beginning of that lot?

Objection to the question.

A. My recollection is that he did.

125th Q. And ran the first line of that lot according to its call by actual survey?

A. Yes, sir.

126th Q. I understood you to say in chief that if the Royal Charlotte tract, lots 316, 317 and 318 and the Eelshine tract were correctly located that then the Goff tracts of 1000 acres, 868 acres and 500 acres respectively, and the Pettyjohn survey were also correctly located by you? Did you make that statement?

A. I believe I did.

127th Q. If you did not locate, as you say, the Royal Charlotte

and lots 316, 317 and 318 according to the original grants
2905 for the said tracts, as you have said you did not, what authority had you then for saying that you had correctly located the Goff and Pettyjohn tracts?

A. The Pettyjohn tract was located from the points on the ground pointed out as the original corners. The Goff tracts adjoin and form a continuous line on the eastern boundary. The Eelshine tract was pointed out to me by Mr. Nine, as I recollect, as lying between the Goff land and the military lots, and the Eelshine tract is laid down from actual survey, or from a point ascertained as a corner of it, and they conform to the lines of the military lots and the Goff survey, as well as the Royal Charlotte.

128th Q. Did you locate the Osborne 660 acre survey on the ground?

A. I did not run the lines of this tract of land. This survey also adjoins the Pettyjohn survey, and has common lines and common corners, and is laid down in accordance therewith.

129th Q. If you did not run the lines of the Osborne survey on the ground, how could you locate it upon your map?

A. As I stated, it has common lines and corners with the Pettyjohn tract, and a part of which I did run on the ground, and as the Pettyjohn courses and distances were common and agree to those lines, it was laid down from that information.

130th Q. Is it not a fact within your experience that surveys which can be easily protracted upon a map will not when located upon the ground join up in the same manner, but clash over on each other, or leave vacancies between?

A. That is not my experience, no, sir. In our method of surveying tracts of land, we use horozontal measurements, and if
2906 they track on the paper, they fit on the ground. Tracts surveyed by surface measurement would conflict.

131st Q. Were not these tracts, these Virginia Grants, originally laid out by surface measurement?

A. I do not know whether they were or not. They were supposed to have been surveyed horozontally in Virginia.

132nd Q. But you say you do not know whether they were or not?

A. I do not personally, of course. In our grants in Virginia, the grants recite all lines and the closing line of the tract.

133rd Q. What did Michael Shaffer point out to you in the Yough river?

A. My recollection is that he pointed out a stone in the river to me as a corner of the William Ashby tract or a corner of the Maryland.

134th Q. Did Shaffer say that that was the end of the fifth line of the tract of land called the Maryland?

A. I think not, but he did say that that was a corner of the tract Maryland, that they adjoined.

135th Q. Did any one point out to you the chestnut stump shown on your plat at red C 1 as the beginning of the William Ashby 200 acre tract?

A. I do not recall if they did. I subsequently surveyed that tract,

and ran to that stump with the bearings and distances all right, and recognized it—as the——

136th Q. Was that survey made in connection with this case?

A. No, not that particular survey.

137th Q. And no notice of that survey was given to Maryland or her representatives in this case?

A. No.

2907 138th Q. And your location of that 200 acre tract, the William Ashby survey, was made from information obtained during that survey?

A. That survey is laid down from information in my possession with reference to John Hooker 2251 acre tract, and the survey of the William Ashby 200 acre tract as well as from information obtained subsequently in regard to the William Ashby 200 acre tract having a common corner as a chestnut, and also from information obtained on the ground during Mr. Brown's survey when, as I recollect, Mr. Ashby pointed this out as a corner of the Hooker survey.

139th Q. Which Mr. Ashby was that?

A. It seems to me it was Jesse. I am not sure. At any rate, this is the same point that is designated on Mr. Brown's map as the letter "Q," where he places it as a corner of the Hooker survey.

140th Q. But you made no location of any of the lines of the William Ashby 200 acre survey, did you?

A. Not at the time of the first running: no, sir. I had this information in my possession at that time, and was expecting to find those corners as I went along.

Counsel for the State of Maryland moves to strike from the map the William Ashby 200 acre survey, as the same has not been located by actual survey on the ground.

141st Q. Did you locate the lines of the military lots numbers 342, 343, 344, 345, on your plat according to the original certificates of award of said lots?

A. I did not. They are protracted on simply for illustration.

Counsel for the State of Maryland moves to strike from the map the defendant's location of the military lots numbers 342, 343,

2908 344 and 345, because the same are not located on the plats in accordance with the original certificates of award for said lots.

142nd Q. And you did not locate said lots upon the ground either, did you?

A. I did not, except that some one did tell me, on the ground, but I do not recall who, that the northeast corner of the Hoye land was a corner of lot 342. We found a corner marked there, but I did not run any of the lines of the lots.

143rd Q. What authority did you have for locating the Fredlock tract on the plats, as you have?

A. That is located from the courses as given in the deed from Henry White Company and H. Fredlock, and from a corner pointed out to me by Garret White as a corner of that tract.

144th Q. Is that the point indicated at red D 1 on your plat?

A. Yes, sir.

145th Q. And that is the only location you have made on the ground of that tract?

A. I ran the northern line of that tract.

146th Q. Of the Fredlock tract?

A. Yes. It was also pointed out to me by Garret White.

Counsel for the State of Maryland moves to strike from the plat the John Pettyjohn survey of 331 acres and the Osborne survey of 660 acres.

147th Q. From whom did you obtain the information from which you have laid down the Fredlock tract upon your map?

A. My recollection is that I obtained it from a deed in the possession of Wesley De Berry.

148th Q. Do you know that that deed correctly described that tract of land?

A. I do not, except as to one line which I ran.

2909 149th Q. Who represented the State of Maryland at the time you located the northern line of the Fredlock tract?

A. John Harned.

150th Q. Did Mr. Harned accompany you on the survey of that line?

A. Mr. Harned accompanied us on all our work with one or two exceptions. I do not now recollect whether he was with us while running this line, but he certainly had an opportunity to be, if he so desired.

151*th* Q. Who was present as the representative of the State of Maryland when you ran the line shown on your plat running from Red B 3 to Red B 4?

A. Mr. Brown.

152*th* Q. Do you mean to say that Mr. Brown was present when you ran that line?

A. My notes state that I met Mr. Brown at that place, and I presume he was present, but my notes do not state just that he was.

Counsel for the State of Maryland moves to strike from the map the Fredlock tract of 210 acres, as located by the defendant.

153rd Q. You have stated that at the end of 4889.3 poles on your line you ran a reference line north fifty-four degrees and forty-seven minutes, west seventy and nine tenths poles to a stone monument standing on the *sorth* side of the Baltimore and Ohio Railroad, said to stand in the Michler line. Will you please calculate the perpendicular distance from your line to the Michler line at that point.

A. 57.92 poles.

154th Q. If you locate the Bacorn tract as you state by protraction, upon what theory do you say that the eastern line of said tract is the same line as the eastern line of the White and Fred-

2910 lock properties?

A. The eastern line of the Bacorn tract is in fact a common line with the White line on the ground.

155th Q. You located the eastern line of the Bacorn tract by protraction, did *not* not?

A. Yes.

156th Q. How do you know then that it is a common line with the White and Fredlock properties on the ground?

A. Why Mr. White told me that the corners were the same.

157th Q. You simply know it from what he told you?

A. Yes, sir.

158th Q. And not as the result of actual survey?

A. Only as I checked to the property lines along my reference line to fences and other objects which would represent the eastern line of the Bacorn tract.

159th Q. I believe you stated that you ran the western line of the Bacorn tract by actual survey?

A. I did subsequently run one or two of those lines, and I think it was one of them——

160th Q. Was that running done in connection with this case?

A. No, it was not.

161st Q. You have fixed certain points in the line of the Bacorn tract from that subsequent survey, have you not?

A. I do not know. They were fixed when the original survey was made.

162nd Q. But I mean when you made your survey*m* not in connection with this case. When did you locate the western line of that tract on the ground?

A. That was run some time subsequent to the other running. I do not recollect the year now.

163rd Q. Was that done in connection with this case.

2911 A. It was not, nor were these lines laid down from that survey. The lines as shown of the Bacorn tract were laid down from protraction originally and not from that survey.

Counsel for the State of Maryland moves to strike from the map the defendant's location of the Bacorn tract, because the same was laid down simply by protraction, and not as the result of actual survey on the ground.

164th Q. Will you please state specifically whether it was Dennis Glover or William De Berry who pointed out to you the planted stone shown at Red D5 on you- plat.

A. I cannot state specifically which.

165th Q. What papers did Dennis Glover have in his possession from which you laid down on your map his 100 acre tract, from the point Red D 5 on your map?

A. I had in my possession a copy of a deed from Edward Long to Dennis Glover for 100 acres, which was recorded in book 62, page 117, dated October 16th, 1882. This, as I recollect, is the paper that I used in laying down this tract of land.

166th Q. You have stated in chief that you laid down on your map the tracts called "Kindness," "Promised Land," and "Thomas and Ann," by reference to Mr. Brown's map? Are said tracts located upon Mr. Brown's map*m* and are they correctly located on the ground?

Objection to the question, because asking for the opinion of the witness, and not proper.

A. So far as I know they were. These tracts were laid down on this map, to as nearly conform to Mr. Brown's as possible for illustration, only with the differences as to a small strip between the "Promised Land," and the other tracts as stated in my testimony.

167th Q. You were present when Mr. Brown located these
2912 tracts upon the ground, were you not.

A. Yes, sir; I think so.

168th Q. Mr. Brown located them in accordance with the patents for the several tracts, did he not.

Question objected to.

A. That was my understanding.

169th Q. Did he not locate on your map lot 1237 according to its call for the tract called "Thomas and Ann"?

A. I think so—practically so. There was a slight difference between the location as Mr. Brown had it, and the way I have it, but it was so small it would not show on the map.

170th Q. Didn't Mr. Brown locate military lot No. 1237 according to the original certificate of award for said lot?

Objection to the question.

A. As I understand it, he did. In my location I accepted it as it is laid, by the fences.

171st Q. You have stated that Thomas and Ann was correctly located upon the ground by Mr. Brown, as you understood it. Does not the Deakins 6,000 acre survey call to the 6th line, and also to the end of the fifth line of said tract?

A. It calls north 10½ east 44 poles to the sixth line of a tract of land called Thomas & Ann, and with it reversed the four following courses; north 76 west 40 poles, north 12½ east 117 poles, north 82 east 169 poles, north 28 east 70 poles.

172nd Q. Mr. Brown located by actual survey on the ground the lines of the Deakins 6000 acre tract according to their calls, beginning at the beginning of the thirty-fifth line, and ending with the forty-sixth line of said tract, did he not?

2913 A. I believe he did.

173rd Q. You were present when said locations were made, were you not?

A. I was.

174th Q. Is not the location of the Deakins 600 acre tract as made upon the ground by Mr. Brown correctly laid down upon his map?

Objected to.

A. There were a number of discrepancies found in the calls before reaching the military lots, but I do not recall just what they were at this time. The lines of the 6,000 acre tract as is now laid, I believe, do not conform to the lines of the Thomas and Ann as Mr. Brown ran them, west of the old State line—all of them at least.

175th Q. (Question repeated) As he located it, hasn't he correctly laid it down upon his map?

A. So far as I am able to observe the tract is laid down as Mr. Brown surveyed it.

176th Q. There is no white oak tree called for in the forty-third line of the Deakins 6000 acre survey is there?

A. No.

177th Q. There is no call in any of the lines of the Deakins 6,000 acre survey for the Maryland line or any other boundary dividing the State of Maryland from the State of Virginia, is there?

A. There is not.

178th Q. Does not the Deakins 6,000 survey call to run west 590 poles to a tract of land patented in Maryland called Nonpariel?

A. It does.

179th Q. And is that point not shown upon your map at Red D 14?

2914 A. It is.

180th Q. This point was correctly located upon the ground, and is correctly laid down and shown upon Mr. Brown's map, is it not?

A. It is, according to his survey, or rather as he surveyed it.

181st Q. He surveyed these lines as I have already understood you to say, in accordance with the original grants, did he not?

Objected to.

A. That was my understanding.

182nd Q. Are not the forty-sixth line of the Deakins 6000 acre survey and the first line of Nonpariel common to each other, that is, one and the same line?

A. I believe they are.

183rd Q. You did not survey, and have not located on your map, the Albert Gallatin survey which the Deakins 6000 acre survey calls for at the end of its forty-fourth line, and then to run with the line of said tract 590 poles, did you?

A. I did not.

184th Q. Do you know the number of acres contained in the Albert Gallatin survey called for in the Deakins 6000 acre tract?

A. I do not.

185th Q. You have stated, I believe, that you did not run the Honore Martin and John Hoye 3600 acre survey on the ground, but laid it down upon your map by protraction?

A. That is correct.

186th Q. Why did you do this when there was an older tract called for at this point?

A. I was unable to get the record of the Albert Gallatin

2915 tract, which I tried to procure.

187th Q. The Albert Gallatin survey was a Virginia patent, was it not?

A. I presume so.

188th Q. Were not several tracts of land patented by the Commonwealth of Virginia to Albert Gallatin?

A. I think there was.

189th Q. Do you know whether the several subdivisions of the Martin and Hoye 3600 acre survey to which you have referred in chief are all located upon your plat, as they exist upon the ground?

A. Those in the southern part, I believe, are located as they exist

upon the ground. The John Redcheaver tract is an original grant, and is located from a known corner. The John Hoye to Jacob Crane part was located from a point that I believe to be the original corner. The other portions in the northern end, except the Feather and Hartman tracts, are located by protraction.

190th Q. Will you please turn to the original patent for this tract.

A. I have not a copy of the original in my possession.

191st Q. Have you a copy of the original survey in your possession?

A. I have.

192nd Q. You are not prepared to say, are you, in the absence of a certified copy of the patent, whether the copy of the survey conforms to the patent or not?

A. I am not. It does conform to the record of the survey, however.

193rd Q. There is no call for any white oak tree or any other kind of a tree in the eastern line of that tract, is there according
2916 to the copy of the survey that you have?

A. There is not.

194th Q. What is the John Redcheaver survey of 297 acres, a Virginia or Maryland grant?

A. I think it is a Virginia grant.

195th Q. Is it senior or junior to the Martin and Hoye survey of 3600 acres?

A. It is a junior survey.

196th Q. What is the date of the Martin & Hoye survey of 3600 acres?

A. November 16th, 1800.

Counsel for the State of Maryland moves to strike from the map the defendant's location of the Honore Martin and John Hoye 3600 acre survey, for the reason that the same has been simply protracted upon the map, and is not laid down thereon as the result of actual survey upon the ground.

197th Q. I believe you stated in chief that you found lines upon the ground in connection with the Van Sickle tract, which do not correspond to the description contained in the grant therefor. Is that correct?

A. I did.

198th Q. And you have located upon your plat these lines different from the description contained in the patent. Is this correct?

A. In respect to the course of the lines I have.

199th Q. Who showed you the white oak which you have indicated upon your map at Red D 11 on the ground?

A. I noted that myself as I passed it.

Counsel for the State of Maryland moves to strike from the
2917 map defendant's location of the white oak shown at red D 11.

200th Q. Then you had no proof that this white oak, any more than any other similarly marked tree, was that particular corner, had you?

A. Nothing more than the papers which I had in my possession called for such a white oak at about this point, and for that reason I was expecting to find it.

201st Q. But you had no proof that that particular white oak which you have located upon your plat was the white oak called for in the papers in your possession?

Objection, on the ground that the proof is for the court, and not the surveyor, that the objects he finds on the ground, he has a right to report, whether there is any proof of what they are or not.

A. I have not.

202nd Q. The Deakins 6000 acre survey does not call for the Maryland line, I believe you have stated?

A. It does not.

203rd Q. You have also stated that the Honore Martin and John Hoye tract of 3600 acres calls in part to run south 1280 poles to intersect a line of the Francis and William Deakins 6000 acre tract, and then east 380 poles to the Maryland line. Is that correct?

A. It is.

204th Q. The line of the Deakins 6000 acre tract here referred to, is 590 poles long, is it not?

A. Yes, sir.

205th Q. Then by what authority do you make the Martin and Hoye survey of 3600 acres intersect the Deakins 6000 acre survey at any given point?

A. In my answer to the previous question in regard to the 6000 acre tract, I stated that this tract did not call specifically for
2918 the Maryland line. In the general description of this tract of land, however, the following appears: "There is granted by the said Commonwealth to Frances Deakins and William Deakins a certain tract or parcel of land containing 6000 acres, by a survey bearing date the 10th day of May, 1788, lying and being in the county of Monongalia on and between the heads of Merley and Snowey Glade creeks, adjoining the head line of Maryland, including a marsh, and between the Snaggy mountain and Pine Swamp, on the waters of Youghagheny river, including the ridge and bounded as followeth, to-wit:" The eastern line of this tract, being north 675 poles, and the only line, I believe, in the tract calling for a due north line, is the line which has been located as adjoining the Maryland line, and so held by the present owners, and for this reason I placed the Hoye and Martin tract to conform.

206th Q. But in point of fact, does such location conform to the original grant of these two tracts?

Objected to.

A. I think it does.

207th Q. And you think it does for the reason you have already given?

A. Yes, sir.

208th Q. Does not the Deakins 6000 acre survey call for the Gallatin survey at the end of the 44th line, and to run west with it?

A. It does.

209th Q. For 590 poles—"West 590" is what it says.

A. It does.

210 Q. Did you run any line to or from the chestnut which you state is on the south side of the Burchinal road, and
2919 shown at red D 16 on your map?

A. I did not, but this point agrees closely with the description given in the deed from John Hoye to Jacob Crane, as running south 204 poles to pointers, which is indicated on the map at D 17 as the northeast corner of U. N. Orr's 200 acre tract, the southeast corner of which is indicated and located at D 11, from references taken on the ground.

The further taking of these depositions is adjourned until to-morrow morning at the same place, and between the same hours.

TUESDAY, July 31*st*, 1906.

JULIUS K. MONROE'S cross-examination resumed by Mr. SINCELL:

211th Q. What proof was given to you on the ground that the point red D 16 was the corner of any tract of land laid down by you?

A. Nothing more than it was a large chestnut stump, and a chestnut stump was called for at that place.

212th Q. What evidence was adduced to you that the point shown at red D 17 on your map represented any marked corner on the ground?

A. Nothing farther than the fact that the chestnut stump stood there, and corresponded, as I have stated.

(By Mr. PRICE:)

215th Q. That is D 16. What about D 17 representing the corner of the Orr tract?

A. No evidence farther than the papers which I had, the deed of Mr. Orr.

By Mr. SINCELL:

214th Q. Does the chestnut stump stand at the point shown at red D 17?

A. No. The chestnut stump stands at D 16. I misunderstood your question.

215th Q. Did you run to any corner at red D 17?

2920 A. I did not.

216th Q. What evidence was furnished to you that the point which you show at red D 18 was correctly located as the corner of any tract on the ground?

A. This point was a stone pile, supposed to be a property corner. I have no information as to whose?

217th Q. Did you run to this point in any land survey made by you in this case?

A. I did not.

Counsel for the State of Maryland here moves to strike from the map and the record the evidence and location of the points red D 16, red D 17, and red D 18.

218th Q. At the end of 6622.5 perches on your reference line you ran south 66 degrees east 5.28 poles to a red oak shown at red E 1 on your map, which you supposed, as you have stated, was in the old Maryland state line. What proof was furnished you on the ground that such was the case?

A. None.

219th Q. What does red F 1 represent on your map?

A. The northeast corner of the Martin and Hoye 3600 acre survey as laid down on the map.

220th Q. That point was simply protracted upon the map, and is not the result of actual survey upon the ground, is it?

A. It is not. It was laid down by protraction.

221st Q. Have you located upon the ground the line of any tract running to or from this point?

A. I have not.

222nd Q. You located the stone indicated on your map at red F 3, which now marks the beginning of the Diadem by running reference lines to it, did you not?

2921 A. I did.

223rd Q. And you found the location to be the same as made by Mr. Brown, and indicated on his map by the black letter, E, did you not?

A. I did.

224th Q. Mr. Brown located by actual survey upon the ground the tract called Diadem, did he not?

A. He did.

225th Q. Did he not locate it according to the course, distances and calls contained in the original grant from the State of Maryland for said tract?

Objected to as improper.

A. I understand that he did.

226th Q. You were present at the time Mr. Brown made the survey of this tract, were you not?

A. I was.

227th Q. You have located by actual survey, I believe, the south-west corner of lot No. 1402, as shown you, have you not?

A. I have located the south-west corner of lot 1402 by actual survey made, as the same was pointed out to me.

228th Q. How is that point designated upon your map?

A. There does not seem to be any designation here for that.

229th Q. Will you please mark it upon your map—the south-west corner?

A. This point is indicated on the map by red F 10, is marked red F 10.

230th Q. Will you please calculate how far east of the corresponding point in your line this point red F 10 is?

A. 64.28 poles.

231st Q. Did you locate by actual survey the spring shown upon your map in the town of Cranesville?

2922 A. I did not. That is platted on the map to conform as nearly as possible to Mr. Brown's survey.

232nd Q. Then you cannot tell from your own work how far said spring may be west of the military lots, can you?

A. I cannot—only approximately.

233rd Q. Is the town of Cranesville incorporated?

A. I think not.

234th Q. Then you do not know what its limits are, do you?

A. It is a village.

235th Q. At the end of 8260 perches, or poles, on your reference line you ran reference lines, as you stated, to a planted stone marked red F 4 on your map, shown you as being in the old Maryland line. Will you please calculate and state how far east that point is from the line which you were running?

A. If I made no mistake, it is 69.33 poles east of the reference line.

236th Q. How far west were you from the western line of lots numbers 1463, 1462 and 1460?

A. If I have made no mistake in my calculations, it is 86.82 poles.

(By Mr. PRICE:)

237th Q. What lots are those?

A. 1463.

(By Mr. SINCELL:)

238th Q. These lots were laid down by you from the point red F 5, as pointed out to you on the ground, were they not?

A. I believe Notley Browning showed me the corner of that lot.

239th Q. And they do not correspond upon the ground with the manner in which they are located upon the tracing of the Deakins plat which you have introduced in evidence, do they?

A. They do, so far as the Diadem is concerned, but not

2923 the state line.

240th Q. You stated in chief that you have laid down the three Stephen West patents filed as exhibits 17, 18, 19 and 21, by protraction. Did you run any of the lines of these tracts by actual survey upon the ground?

A. No.

Counsel for the State of Maryland here moves to strick from the map the location of the four Stephen West tracts, three of them of 400 acres each, and one of 500 acres.

241st Q. The pine swamp covers a considerable territory, does it not?

A. It does.

242nd Q. How wide is it east and west?

A. I should judge, it is a mile wide, in the neighborhood of a mile.

243rd Q. And two miles about from north to south?

A. Two and a half to three miles.

244th Q. Did you run the lines of the deed from Abram Jeffreys and William Elliott to John Crane?

A. I did not.

245th Q. Did you run the line of the deed from John Summers to John Crane, dated August 31st, 1837?

A. I did not.

246th Q. You have simply protracted the lines of these deeds upon the plat, have you not?

A. I have.

Counsel for the State of Maryland moves to strike the location of the two last deeds mentioned from the plat.

247th Q. Did you run the lines of the Henry Banks survey of 8,000 acres by actual survey on the ground?

2924 A. I did not.

Counsel for the State of Maryland moves to strike the location of this tract from the map.

248th Q. I believe you stated that you changed one or more of the lines of this Banks survey from the manner in which they are laid down in the Morris report and map? I refer to exhibits "Monroe 24 and 25." Is this correct?

A. I laid down the southern line to conform to the *the* point shown me by Mr. Notley Browning.

(By Mr. PRICE:)

249th Q. The question was, did you lay it down different from what the papers call for?

A. Only as to that one line. That would make a little change in the southern line from the original survey.

(By Mr. SINCELL:)

250th Q. In the case of the Van Sickle land already mentioned, you changed the lines of your map to fit the lines and corners shown you on the ground, and in the preparation of your map of the Banks—of the 8000 survey, you changed the line to fit what was shown you on the ground? Is that correct?

A. The lines of the Van Sickle tracts were changed on the ground.

251st Q. And one line of the Banks tract was changed to fit what was shown you on the ground?

A. That line was simply lengthened or shortened a little to make it conform to that stone corner shown me. That was all.

252nd Q. Then in point of fact, it was changed to fit what was shown you upon the ground, was it not?

A. It was.

253rd Q. If, in these cases, you found by reference to points on the ground that the description in the patents would not conform to the manner in which the tracts are laid upon the ground,

2925 how do you know that this might not occur in many other cases which you have laid down by protraction upon your map?

A. It is possible for it to occur.

254th Q. How did you locate the Deakins 500 acre tract on your map? Dated October 9th, 1790.

A. Laid it down from a known corner on the ground.

255th Q. Did you locate this tract by actual survey upon the ground?

A. I did not.

256th Q. In the course of the surveys made by the State of Maryland in this case, all the lines of the Elder Spring grant were located by actual survey, by Mr. Brown, upon the ground, were they not?

A. They were run out on the ground, but I think they were run to conform to the holdings on the ground.

257th Q. Did not Mr. Brown run the lines of that grant according to the courses, distances and calls contained in the original patent therefor?

Objection.

A. He ran out the original courses and distances, but made corrections on the ground on corners, recognized corners. For instance, on the north 7 east line, he extended the line from 173 poles to 178 poles to conform to the present holdings.

258th Q. Did he not in the first instance locate that grant according to the patent, and then afterward make the corrections which you speak of?

Objection to the question.

A. My notes show that he made the corrections at the time he ran the line. They were taken on the ground.

259th Q. In locating the Deakins 500 acre survey upon
2926 your map, did you not adopt Maryland's location of the Elder Spring grant in order to so locate it?

Objected to.

A. I did not. It was laid down according to my location.

Counsel for the State of Maryland moves to strike from the map the defendant's location of the Deakins 500 acre survey.

260th Q. Did you locate the Henry P. Sines deed for 100 acres on the ground?

A. Only at the points or crossing his line fences.

261st Q. You ran no lines in said deed, did you, on the ground?

A. I did not.

Plaintiff moves to strike out defendant's location of the Henry P. Sines deed for 100 acres.

262nd Q. In locating the Henry Deal 367 acres on your map, did you not locate it as you have because it had lines common with the Elder Spring grant?

A. I did not. I ran sufficient of those lines to convince me that the location was correct.

268th Q. What line of that tract did you locate by actual survey upon the ground?

A. I ran a reference line to a known corner in two places, and also ran the southern line there of the Deal tract.

269th Q. When did you run the southern line of said tract?

A. I believe, upon examination, I am mistaken about running the southern line of this tract. I was under the impression that I had. I find I only ran a reference line, or reference lines to two or three known corners of this tract.

2927 Plaintiff moves to strike defendant's location of the Henry Deal 367 acre tract from the plat.

The WITNESS: I did also run a reference line from the point near the southeast corner of this tract to a point opposite the northeast corner, and found it conformed to the description of said tract—the known corner.

270th Q. In locating the Henry Deal 328 acre survey on your map, did you not so locate it, because it had lines common with the Elder Spring grant?

A. The Elder Spring and Henry Deal 367 acre tract had common lines and known corners.

271st Q. How do you know that the patent calls for lines common to the Elder Spring grant?

A. In the general description of this patent, it calls to adjoin lands of said Deal on the south and east sides, and the lands of James Irvin, Henry Kelly (?) and Raymond tract called Elder Springs survey.

272nd Q. That is the description contained in the original survey of the tract, is it not?

A. Yes, sir.

273rd Q. As a matter of fact you do not know what the calls are in the patent, do you?

A. I do not, except that it would be based upon the survey of the tract.

274th Q. Did you locate this tract upon the ground?

A. I did not.

Plaintiff moves to strike out defendant's location of the Henry Deal 328 acre survey on the map.

275th Q. You have stated that the Elder Spring lines do not correspond with the Henry Deal 328 acre survey lines?

A. Not exactly.

2928 276th Q. Where do you show this discrepancy upon your map?

A. It is not shown.

277th Q. Is it not a fact that you have protracted this tract upon the map, and made it fit the Elder Spring grant without regard to the calls?

A. It is simply protracted around to the Elder Spring tract, and the lines of the Elder Spring tract are assumed to be the lines of the Deal tract from that on. As a matter of fact it would have to conform to it.

279th Q. You have stated that you located a reference line on the

ground running from the end of 9488.8 poles on your line, to a black gum and white oak stump, did you not?

A. I did.

280th Q. These trees mark the beginning of the tract called Elder Spring, do they not?

A. I understood them so; yes, sir. This is the same point shown to Mr. Brown as the beginning of the Elder Spring tract.

281st Q. And this tract was patented by the State of Maryland to Francis and William Deakins in 1774?

A. That is my recollection.

282nd Q. Will you please mark this point on your map by a red letter?

A. This point is indicated on the map by red G 13.

283rd Q. And this corresponding point is designated upon Mr. Brown's map as black F, is it not?

A. It is.

284th Q. This beginning was pointed out to Mr. Brown — Samuel Faulkner, a witness produced upon the ground on behalf of the State of Maryland, was it not?

A. That is my recollection.

2929 285th Q. Mr. Faulkner lives upon this tract of land, does he not?

A. He does.

286th Q. What is the perpendicular distance from the Michler line to the northeast corner of military lot No. 2985, shown upon your map at red G 7?

A. I took no reference to the Michler line at that point.

287th Q. Did Mr. Brown locate the cherry Hill tract by actual survey on the ground, from the beginning as pointed out by a witness produced upon the ground?

Objected to.

A. He did.

28th Q. Did he from said beginning as pointed out, located said that according to the courses and distances and calls contained in the original grant therefor?

Objected to for the reason that the only proper evidence to be given are the things that the surveyor found upon the ground, and the court is then to judge as to whether it is properly located or not.

A. As far as I know, Mr. Brown endeavored to do this.

289th Q. Has he correectly located said tract upon his map in accordance with the survey made upon the ground?

Objected to for the same reason.

A. It appears to be correctly located upon the map.

290th Q. If the Elder Spring and Cherry Hill grants are correctly located upon the ground, and upon the map by Mr. Brown, according to the courses, distances and calls contained in the original patents, then your location of the Henry Deal survey of 367 acres upon your map is not correct, is it?

A. It is.

291st Q. Will you please refer to Mr. Brown's map show-
2930 ing the location of the Elder Spring tract and the Cherry Hill tract, and state whether or not there is room enough between said tracts for the Henry Deal survey of 367 acres, as you have located it upon your plat?

A. There is not, and it is not so located upon my plat.

292nd Q. What is not so located?

A. The Henry Deal survey.

293rd Q. Does not the Henry Deal survey according to your map lie between the Elder Spring tract and the Cherry Hill tract?

A. The Henry Deal tract lies on a considerable portion of the Cherry Hill tract, not wholly between. It laps over.

294th Q. In point of fact, do not the Elder Spring and Cherry Hill surveys when located upon the ground clash at the northern end of the Elder Spring tract, and the south western end of the Cherry Hill tract?

A. They did as Mr. Brown ran them.

295th Q. On page 199 of your testimony in chief you said that Military lots numbers 2952, 2989, 2987, 2985, 2983, 2980, and 2981, are laid down different on your map from the way they are laid down on the Deakins map, and that on the tracing of the Deakins map their eastern boundary is on one straight line, while on your map they are laid down showing offsets. Did you mean to say their eastern or western boundary on the Deakins map is in one straight line?

A. I should have said that the western boundary was laid down in one straight line.

296th Q. The location of this block of lots when surveyed on the ground does not correspond with the tracing of the Deakins map which you have introduced, does it?

2931 A. It does not.

297th Q. You did not locate the Spurgin 240 acre survey on the ground, did you?

A. I located it from a known corner on the ground.

298th Q. You simply located the corner and ran none of the lines of the tract?

A. I did not.

299th Q. Is that correct?

A. That is correct.

Plaintiff moves to strike from defendant's map defendant's location of the Spurgin 240 acre survey.

300th Q. Did you locate military lots 2954 and 2957 and 2958 on the ground?

A. I did not.

Plaintiff moves to strike from defendant's map defendant's location of said lots.

A. These lots were simply laid down by protraction for purposes of illustration to conform with the original descriptions.

(By Mr. PRICE:)

301st Q. What lots are those?
A. They lie directly north—2954, 2957 and 2958.

(By Mr. SINCELL:)

302nd Q. Did you locate upon the ground the deed from Spurgin and wife to Andrew Teets for 240 acres?
A. I did not. This is the same tract as the Spurgin tract, so located.
303rd Q. Did you locate the Joshua Fike house upon the ground by actual survey?
A. I did not. I stated that that was located approximately.

Plaintiff moves to strike from the map defendant's location
2932 of the Joshua Fike house.

304th Q. I will ask you the same question in reference to the Amanda Hull house.
A. It was located approximately, as stated in my deposition.

Plaintiff moves to strike defendant's location of the Amanda Hull house from the plat.

The WITNESS: I might state that Amanda Hull owns a small corner of the Deal survey which I had surveyed prior to this, and knew it to be located as it is.
305th Q. Was that survey which you have just mentioned made in connection with this case?
A. A prior survey.
306th Q. Maryland had no notice of that survey?
A. No, sir.

Plaintiff objects to evidence of any survey or locations made by witness when not made in connection with this case, and without notice to the plaintiff.

307th Q. What makes you think that Joseph Guthrie pointed out to you the chestnut snag shown at red H 1 on your map?
A. At the time this location was made, we were boarding with Mr. Guthrie, and he took considerable interest in the work, and my recollection is that he went with us to this point and pointed it out.
308th Q. But you are not sure of that, are you?
A. No, I am not sure. That has been twelve years ago, and I could not be absolutely sure.
309th Q. Did you run any lines on the ground from the point shown at red H 1 on your map?
A. I did not.

2933 Plaintiff moves to strike defendant's location of the point red H 1 from the map.

310th Q. What is the perpendicular distance from the Michler line to the point red H 3 on your map?
A. I have not at hand the distance from this point in my reference line to the Michler line, which was taken by Mr. Brown, and I

have failed to record it. I therefore cannot give the distance from the Michler line to red H 3.

311th Q. In locating the Isaac James tract of 220 acres, upon your map, you simply protracted it, and made it conform to the reference line you ran from the end of 10469.9 poles on your line, did you not?

A. This tract is located with reference to the chestnut corner as I recollect pointed out by Mr. Guthrie and also by a point located by actual survey in the eastern boundary of this tract as pointed out, as I now recollect, by Mr. Thomas, as being in the state line. These points conform to the location of the James tract as it is laid down.

312th Q. You simply took references to the points you have mentioned, and did not run any of the lines of the tract?

A. I did not.

Plaintiff moves to strike defendant's location of the James tract from the map.

313th Q. In regard to the Fearer 50¼ acre survey, is it not a fact that the last two lines of this tract do not coincide with the Isaac James tract, and that notwithstanding this discrepancy in description, you have laid it down to conform and adjoin up to the said James tract?

2934 A. It is so laid down, but I stated in my deposition the reasons for it. It is laid down also to conform to the Guthrie tract, and the other surrounding tracts where the descriptions are there.

314th Q. Did you locate upon the ground the Fearer tract of 119 acres?

A. I did not.

Plaintiff moves to strike defendant's location of this tract from the map.

315th Q. Did you locate the David Van Sickle tract of 100 acres on the ground?

A. I noted points of crossing the line fences and located a corner of the same as pointed out to me by Mr. Van Sickle, who now lives upon these lands.

316th Q. But you ran none of the lines of the tract, as I understand you?

A. I did not.

Plaintiff moves to strike defendant's location of this tract from the map.

317th Q. Did you locate upon the ground the Lewis Van Sickle tract of 120 acres?

A. I did not, any farther than by the corners on the ground.

Plaintiff moves to strike the defendant's location of this tract from the map.

318th Q. You have stated that Marshall Fike pointed out to you lots numbers 2997 and 2998, and that you ran your reference line

from the white oak at the corner of said lots south. Did you find from that running that the western line of these lots was in the same north line with the other lots which you have located upon your map, along the western lines of the lots?

2935 A. I did not.

319th Q. Lot No. 2999 does not call for the Granary tract, does it, in its certificate of award?

A. I believe it does not.

320th Q. The monument shown you at Mason & Dixon's line and located upon your plat was not pointed out to you by any one as marking any boundary between the states of Maryland and West Virginia, was it?

A. Not to my recollection.

321st Q. At the time Mr. Brown located the Maryland land grants, did he not have certified copies of the patents for the same?

Objected to.

A. I believe he did.

322nd Q. Did you not have access to those certified copies?

Objected to.

A. I did.

323rd Q. In making his locations of these tracts upon the ground, did he not take the calls from these original patents and run his lines according to the courses, distances and calls there given.

Objected to because the only proper evidence is what Mr. Brown did, not the opinion of the facts. Facts alone are the only proper evidence.

A. My understanding was that he did, or endeavored to do so, rather.

324th Q. You did not locate the Jacob Thomas patent for 100 acres on the ground, did you?

A. Not by actual survey of the lines—not by running the lines out on the ground.

325th Q. By what means then did you locate it upon your plat?

A. That tract was located upon the plat immediately after

2936 this work was done some twelve years ago, and from some satisfactory evidence at that time, of which I do not now find a note in my books. The location of this tract, however, agrees substantially with the point or corner as pointed out by Mr. Thomas on the ground as the northeast corner of his tract, at the time Mr. Brown was surveying at that point.

The plaintiff moves to strike the defendant's location of this tract from the map.

326th Q. Did you locate the house upon this tract without any measurement being made or lines run, by which to correctly tie it to your reference line, in order to locate it upon your plat?

A. The house is only located approximately upon this tract.

The plaintiff moves to strike the defendant's location of the house upon this tract from the plat.

327th Q. Did you locate by actual survey on the ground the Horace Ludington patent for 106 acres?

A. I did not. This tract is located or laid down upon the plat to adjoin the Thomas tract, and from a reference line running to a corner of Levi Fike and Umble, which was pointed out to me by Marshall Fike as standing in the eastern line of this tract, and as being in the old state line.

328th Q. As I understand you then, you have protracted this tract upon your plat in its relation to the Jacob Thomas 100 acre survey? Is that correct?

A. Yes, sir, and in relation to the point above mentioned from actual survey.

329th Q. But you did not locate the Thomas survey of
2937 100 acres there except in the manner you located the Ludington point, did you.

A. That point is located accurately with reference to the Pennsylvania line, and would necessarily fall in this position by reason of these other reference points taken.

The plaintiff moves to strike defendant's location of the last two named tracts from the map.

330th Q. You have stated that lot No. 2995, lies directly north of 2996 according to the Deakins tracing you have offered in evidence, and that lots 2994, 2993, 2992, 2991, and 2997 lie north of 2995. Did you locate by actual survey upon the ground this block of lots?

A. I did not, except as to 2997 and 2996, a stone pile having been pointed out by Mr. Fike to me as a common corner of these lots, 1.45 poles east of a point at the end of 104.85 poles north in a reference line from the white oak pointed out as the corner of 2997 and 2998, by Mr. Fike. The others are laid down by protraction.

331st Q. Is it not a fact that if you were to undertake to protract upon your map lots numbers 2994, 2993, 2992, 2991 and 2997, which you have stated lie north of 2995, that you would not have room enough betwen your location of 2995 and the Pennsylvania line to so locate all of the lots named?

A. If the white oak pointed out to be as the common corner of 2997 and 2998 is correct, there would not be room for all these lots.

332nd Q. You have stated, I believe, that the Michler line is a straight line from the Fairfax stone to the Mason & Dixon line. Can there be any other straight line between said points except one that would coincide with the Michler line at the place where it is
2938 located.

A. I did state that the Michler line was assumed to be a straight line. It appears, however, upon resurvey by Dr. Bauer in this case that it was not a perfectly straight line. There could be but one straight line between the same points.

333rd Q. The deviations of the Michler line from the true north as ascertained by Dr. Bauer were exceedingly slight, were they not?

A. They were, compared with the length of the line.

— Q. If then, the military lots were laid off to a straight line on their westernmost boundary, would not such boundary coincide with the Michler line at all points along said line?

A. From what point do you mean?

334th Q. From the Fairfax stone to the Mason & Dixon line?

A. If they were laid off in an astronomical line, they would.

335th Q. The only perfectly straight line that could be located between the Fairfax stone and the Mason & Dixon's line, due north, would be an astronomical line, would it not?

A. The most practicable method to lay down a perfectly straight line, which is impossible, would be by astronomy.

336th Q. Meridian lines established as was the Michler line are generally accepted as straight lines, are they not?

Objected to.

A. They are.

337th Q. I believe you have stated that you laid down the Granary tract upon your map to conform to the tracing of the Deakins
2939 map, and not as it is located by actual survey on the ground? Is this correct?

A. It is. It was laid down merely as a matter of illustration, and some distance from the line as claimed by West Virginia.

338th Q. Did not Mr. Brown locate the Granary grant upon the ground according to the courses, distances and calls in the original patent for said tract?

Objected to, for the reason that the question calls for an opinion of the witness, when only the facts found are the proper evidence?

A. As I understand, he endeavored to do so.

339th Q. And is it not correctly shown upon his map in accordance with the survey of said tract upon the ground?

A. I believe it is, except that he extended one or more of the lines to conform to indicated property lines on the ground.

The plaintiff moves to strike the defendant's location of the Granary tract from the map.

340th Q. The location of Marshal Fike's house upon your map shown at red H 8 is simply an approximate one, is it not?

A. It is as to its position north and south. I ascertained by actual survey that it stands west of a south line from the white oak pointed out as the corner of lots 2997 and 2998.

341st Q. Did you run any reference line to said house?

A. I did not. I ran a reference line directly east of his house from said white oak.

342nd Q. Then the location of his house as it appears upon your map is not the result of actual survey upon the ground?

2940 A. It is not.

The plaintiff moves to strike the defendant's location of Marshall Fike's house from the map.

343rd Q. Did you locate the John Fike 388 acre tract, and the Samuel Boger tract of 80 acres by actual survey upon the ground?

A. I did not.

The plaintiff moves to strike the defendant's location of said tracts from the map.

344th Q. You have stated that by reason of horozontal measurements, tracts correspond in their position upon the ground to their position upon a map, when located by protraction, and that the lines fit. If such be the case, how does it happen that the Boger 80 acres and the Ludington survey of 106 acres clash, and the Boger tract lies on top of the Ludington tract?

A. It was intended to do so.

345th Q. How do you know that it was so intended?

A. The description as given in the Boger tract covers a portion of the Ludington tract.

346th Q. Then you mean to say that the commonwealth, a common grantor, made two grants for the same land?

A. I do.

347th Q. Did you locate the William Robinson 528 acre and 100 acre tracts upon the ground by actual survey?

A. I did not. They are located by a common line of an adjacent tract.

The plaintiff moves to strike the defendant's location of said tracts from the map.

348th Q. Did you locate the Fearer tracts of 119 acres and 50¼ acres upon the ground?

A. I did not.

2941 The plaintiff moves to strike these tracts from the map, as located by the defendant.

349th Q. What connection is there in title between the Daniel Griffith survey of 31 acres, and the present occupant of the 50¼ acre survey?

A. I have no information as to the direct line of title.

The plaintiff moves to strike defendant's location of the Griffith 31 acre survey from the map.

350th Q. You have located the George Teets 31½ acre place by protraction simply on account of its having common lines with the Deal and Spurgin surveys before mentioned, have you not?

A. That and the fact that the people who own the land and live upon it, told me that this 31 acre tract lies in this position.

351st Q. You located none of the lines of the tract, did you?

A. I did not run any of the lines. I located a corner of that tract on the ground as pointed out to me by Marshal Friend.

The plaintiff moves to strike the defendant's location of the George Teets 31½ acres from the map.

352nd Q. Did you locate the John Summers 200 acres, the William Gable 500 acres, and Abram Jeffers and others 520 acres, and the John and Calvin Crane tract of 346 acres by actual survey on the ground?

A. I did not.

The plaintiff moves to strike the defendant's location of these tracts from the map.

353rd Q. Did you locate the Samuel Boger 250 acre tract on the ground?

A. I did not.

2942 Plaintiff moves to strike the defendant's location of this tract from the map.

354th Q. There is no call in its description for the Elder Spring survey, is there?

A. It does not call specifically for the Elder Spring survey, but its eastern lines practically conform to the western lines of Elder Spring, and was thus laid down.

355th Q. In point of fact, it has no lines common with the Elder Spring tract, has it?

A. They do not exactly agree—practically so.

356th Q. Is it not a fact that you have located this tract upon your map, and made its lines conform to those of the Elder Spring tract?

A. I have. The difference in the lines is a matter of bearing, as recited in the Boger survey, where a certain allowance is made for a variation intended doubtless to conform to the Elder Spring line.

The plaintiff moves to strike the defendant's location of this tract from the map.

357th Q. Did you locate the Jacob Guseman 750 acre survey and the Thomas Brown 490 acre survey by actual survey on the ground?

A. I did not.

The plaintiff moves to strike the defendant's location of these tracts from the map.

358th Q. You have stated that you have found no survey of the tract of David Parsons?

A. Not yet.

359th Q. And yet you locate upon your map a white oak, as shown at red D 19 as standing in David Parson's line? Upon what authority did you make this location?

A. From the authority of adjacent tracts which call for
2943 this white oak as a beginning corner standing in the David Parsons line.

360th Q. And in point of fact you do not know that there ever was such a survey made for David Parsons?

The plaintiff moves to strike this location of the defendant from the map.

361st Q. Did you locate the Jacob Crane 514 acre tract and the Isaac Van Meter 400 acre tract and the Isaac Van Meter 156 acre tract on the ground by actual survey?

A. I did not.

The plaintiff moves to strike the location of the defendant of these tracts from the map.

362nd Q. Did you locate the John Rodeheaver 297 acre tract on the ground?

A. This tract is laid down from a point which I located on the

ground, I believed to be the original beginning corner of the John Rodeheaver tract.

363rd Q. When you say, as I understand you do, that it is located from a white oak stump on White Oak Spring run, you mean you simply took a reference to said stump, and did not run any of the lines of said tract, do you not?

A. I do. The fences of the tract, however, conform to that stump as to bearings.

364th Q. Did you locate any of said fences upon the ground by actual survey?

A. I noted their position. I did not run the lines of the fences.

The plaintiff moves to strike defendant's location of this tract from the map.

365th Q. Did you locate the Jesse Ashby survey of 400 acres and the Deakins survey of 908 and 354 acres respectively upon the ground by actual survey?

2944 A. The Ashby survey is laid down to conform to a corner pointed out to me by Mr. De Berry, I believe, as the corner of the Jesse Ashby survey.

366th Q. Mr. De Berry, who you think pointed this out to you, did not point out to you any of the lines of the tract, did he?

A. Well, yes, sir, the northern line of the tract is now fenced, as it is now held.

367th Q. Did you locate that line upon the ground by actual survey?

A. I do not recall that I ran the line out on the ground. My recollection is that we took such references to the line as would indicate that it was properly located.

368th Q. Now, what as to your location upon the ground of the Deakins tracts which you have mentioned?

A. The 354 acre Deakin- tract was located as adjoining the Henry White tract, which it calls for—or which calls for the Deakins—or Hoye then—and the White tract was located from corners pointed out on the ground by Mr. White, who owned the tract.

369th Q. But you did not run any of the lines of said tracts, did you?

A. I did not. The 908 acre tract is shown by old maps in my possession to adjoin this. This was laid down as a matter of illustration. I did not find any of the corners of that tract on the ground, did not attempt to.

The plaintiff moves to strike the defendant's location of these tracts just mentioned from the map.

370th Q. Did you locate the Henry White survey of 47 acres on the ground by actual survey?

A. I located the southeast corner of the same, and my reference line ran parallel with its eastern line practically to the north-

2945 ern line of the same as pointed out to me by Mr. White on the ground.

371st Q. You did not locate said lines, however, by actual survey, did you?

A. Not any farther than the parallel line.

The plaintiff moves to strike the defendant's location of the White survey of 47 acres from the map.

372nd Q. Did you locate by actual survey on the ground the William Deakins 200 acre survey?

A. I ran certain lines of the same by actual survey on the ground.

373rd Q. What lines did you run by actual survey on the ground?

A. The western and southern lines. This tract is laid down to conform to that survey as adjoining the William Ashby 300 acre survey.

374th Q. Did you make said survey in connection with this case?

A. I did.

375th Q. Who was present as the representative of the State of Maryland at the time you made said location?

A. My notes do not show whether Mr. Brown was present on that day, but he was a day or two before, and had notice of this work.

376th Q. Did you locate the William Ashby 50 acre survey upon the ground?

A. I ran a reference line from corners pointed out to me by John R. and Daniel Bowman as corners of the Ashby 300 acre tract eastward, which would be the southern line of the Ashby 50 acre tract, and is laid down to conform to this line and the lines of the adjacent tract as platted, and as called for in the description of said patent.

2946 377th Q. Did you locate by actual survey upon the ground the Deakins 315 acres survey and the Deakins 2000 acre survey?

A. I did not.

The plaintiff moves to strike the defendant's location of said tracts from the map.

378th Q. Did you locate upon the ground by actual survey the Wilson, Byrne and Morris 600 acre tract?

A. I did.

379th Q. Did you make said location in connection with the case at bar?

A. I did not. It was a subsequent survey.

Plaintiff moves to strike the defendant's location of this tract from the map.

380th Q. Did you locate the John Hoye 72 acre survey by actual survey upon the ground?

A. I did not.

381st Q. Did you locate the Deakins 6310 and the Deakins 9000 acre surveys upon the ground by actual survey?

A. I did not.

Plaintiff moves to strike the defendant's location of these tracts from the map.

382nd Q. Did you locate by actual survey the Griffith and Wotering 200 acre tract upon the ground?

A. Only certain lines of it while running the Wilson-Byrne and Morris.

383rd Q. But that survey, as I understand it, was not made in connection with this case?

A. Subsequently.

The plaintiff moves to strike the defendant's location of the Griffith and Wotering tract from the map.

(Noon recess).

2947 1:30 P. M.

The plaintiff now moves to strike from the map the location of all other tracts and subdivisions of tracts located upon the map west of the Michler line not hereinbefore specifically objected to, and concerning which the defendant has not offered or attempted to offer any proof as to the location of the same.

384th Q. How far east of the Michler monument did your line intersect the Mason & Dixon line?

A. According to my measurement 87.2 poles.

385th Q. In running your line north from the Fairfax stone, did you not cross Laurel run?

A. I did.

386th Q. Where does Laurel run head?

A. It heads on the south eastern slope of Backbone mountain.

387th Q. Not very far from the Potomac spring, does it, as located by Mr. Brown?

A. No, it is some distance northeast of that point.

388th Q. I believe you have stated that you knew persons living between the Michler line and what you term the old state line who in any way adhere to the State of Maryland, and you limit the number of Samuel Faulkner, Mr. Bettinger, and Ethbell Falkenstein?

A. That is my recollection.

389th Q. You know Parker Ashby, do you not?

A. I do.

390th Q. Do you know where he lives?

A. At the time I ran this line, it seems to me that he lived—well, he did live in a house standing just about on the line of the 300 acre tract of William Ashby, and the tract called Maryland.

2948 391st Q. And that would put him where with reference to what you call the old state line?

A. Put him east of it.

392nd Q. Did not Parker Ashby in his testimony in this case taken on behalf of the defendant state specifically that he and his brothers claimed to the Michler line as the boundary between the states?

Objected to because the deposition of Parker Ashby will speak for itself.

A. I do not really recollect as to what his testimony was about that.

393rd Q. Did John E. Otto live between what is known as the Michler line, or between the Michler line and what you denominate the old state line?

A. He did not.

394th Q. Where did he live with reference to that line?

A. He lived east of the old state line.

395th Q. He lived east of it, did he?

A. Yes, sir.

396th Q. Is it not a fact that Marshal Friend lived west of what you call the old state line?

A. He did.

397th Q. Don't you know that Marshall Friend voted in Maryland?

A. I do not remember about that. He pays taxes on his land, the land he lives on, in West Virginia, but whether he votes in Maryland I am not sure.

398th Q. Don't he own a part of the Elder Spring tract?

A. I think he does.

399th Q. Don't he pay taxes on that in Maryland?

A. I believe he does; yes, sir.

400th Q. Do you know Melvy Friend?

2949 A. Yes.

401st Q. Don't he vote in Maryland?

A. I do not know indeed about that.

402nd Q. Do you know where John H. Friend lives?

A. I recollect a Friend living in a bottom somewhat east of Samuel Faulkner—southeast a little perhaps, but I cannot now recollect whether his name is John Friend or not.

403rd Q. Did the Friend to whom you refer live east or west of what you call the old state line?

A. My recollection is that the man who lived there pointed out an old house not then occupied as being on the old state line, but that his new house, which he did occupy was on the eastern side of that line. That is my recollection, but I would not be positive about it. I am positive about where the old house stood, but not as to the other.

404th Q. Is it not a fact within you- knowledge that Levi Fike has been for a long number of years a justice of the peace of the State of Maryland in and for Garrett county, appointed by the Governor of Maryland?

Objected to as not the best evidence.

A. I do not know Levi Fike, do not know about it.

405th Q. You have stated in chief that the general trend of the Backbone mountain, which you have laid down upon your map, is about northeast and southwest, between the point where the Potomac meridian crosses the mountain and the Michler monument upon the Backbone mountain. This general course continues through that section, does it not?

A. It does to the south eastward, but I am not sure as to
2950 the northeastward. I never ran any part of that to the north east.

406th Q. Will you give the general course of the ridge running from the Fairfax stone forming the boundary line between Grant and Tucker counties.

A. It runs south east for a considerable distance, and then runs north east.

407th Q. This general course continues toward the north west, as you have laid it down upon your map, does it not?

A. From what point do you mean?

408th Q. You give the general course of it running from the Fairfax stone forming the boundary between Grant and Tucker?

A. From the point south of the Fairfax stone, the general trend is north west.

409th Q. The stream which you have surveyed and indicate upon your map, also outline this ridge, do they not?

A. They do.

410th Q. This Fairfax ridge, as you have outlined it, runs to and adjoins the main mountain not far west of the Potomac spring, does it not?

Objected to, because the question assumes that that was the name of the ridge, and that there is a spring called "Potomac Spring" which is not admitted by the State of West Virginia.

A. That ridge would adjoin the main mountain rather south west from that point.

411th Q. The mountain and the Fairfax ridge from an angle, one leg of which rests upon Fairfax stone, the other upon the point where the Fairfax meridian crosses the Backbone mountain,
2951 with the apex of the triangle at the farthest point west of the Michler meridian. Is that correct?

A. Approximately.

412th Q. And you have so indicated it upon your map?

A. I have.

413th Q. Does not the Potomac spring head upon the Backbone mountain and not far from the apex of this triangle?

Objected to, because there is no Potomac Spring known.

A. The spring designated on the map at "Brown monument."

414th Q. Now the question is, does not the Potomac spring head upon the Backbone mountain not far from the apex of this triangle?

A. The spring marked as "Brown monument" heads on the Backbone mountain.

415th Q. Is not that the spring which Mr. Brown upon his plat designates "Potomac Spring?"

A. It is.

416th Q. How is this point marked upon your map?

A. It is marked by a square with the words "Brown monument" underneath.

417th Q. How far west of the Fairfax meridian is this point?

A. Approximately 5982 feet.

418th Q. How far is the Potomac Spring from the summit of the Backbone mountain?

A. 296 feet, I have it.

419th Q. The mountain at this point is higher than the Fairfax ridge at the Fairfax stone, is it not?

A. It is.

420th Q. Do you know how much higher, that is—do you know the comparative elevations of the spring at Fairfax stone, and Potomac spring?

A. I would have you look up my notes to get that? I have got it somewhere but do not know where it is. My recollection is,
2952 according to Mr. Brown's levels, about 124 feet.

421st Q. Mr. Brown took the exact levels, did he not, in ascertaining the elevation of these points?

A. He did, so far as I know.

422nd Q. And you were present at the time he took the levels?

A. I was.

423rd Q. You have also stated in chief that you began your survey of the line in this case at the Fairfax stone. This point is common with the Michler meridian, is it not?

A. It is.

424th Q. From this point your object you have stated was to retrace some old lines supposed to have been run from this point? Is that correct?

A. It is, to locate it on the ground.

425th Q. What old line were you attempting to retrace?

A. I had understood that Francis Deakins ran a line from that point northward.

426th Q. But you have no proof that he did run such a line, have you?

A. I have no direct proof; no, sir.

427th Q. You have indicated upon your map a point black WC in a red circle, supposed to be an old line. Does your line coincide with this point?

A. This point lies approximately south of a point designated on the map at C 2, and is approximately in the eastern property line as located on my map.

428th Q. I asked for your line. Does it coincide with your line?

A. It does not.

429th Q. You took a reference just north of this point, W C, did you not?

2953 A. I did.

430th Q. And that point is shown at C 2 on your map?

A. C 2.

431st Q. Is this point black W. C. east or west of your line?

A. West of it.

432nd Q. How far west?

A. About twenty rods—twenty-two.

433rd Q. From the end of 2714 poles on your reference line you located a small stone twenty-five perches west of your line near a thorn tree. How is this point designated on your map?

A. This point is now designated upon the map as red C 13.

434th Q. Is it the same point as the point black W D with red circle?

A. It is not.

435th Q. You have stated in chief that the point indicated on your map by the red letter F 4 was shown you as a point in the old Maryland and Virginia state line? Is this correct?

A. It was.

436th Q. Is this point east or west of your line?

A. It is east of that line?

437th Q. Can you calculate how far east?

A. I gave you that this morning, I believe. It is 69.33 poles.

438th Q. Will you please state how far west of your line the point is which is represented upon your map as being the intersection of the old state line with the Mason & Dixon line.

A. (Measures on map). Approximately 70 rods. I do not recall the exact measurement.

2954 439th Q. Did you give the distance between the point black W D and C 13?

A. No——

440th Q. Can you give that distance?

A. I cannot exactly.

441st Q. About how far is it?

A. Well, I should judge it is possibly thirty rods.

442nd Q. You have just stated that at the points indicated on your map as black W C and black W D you were from 22 poles to 30 poles east of what is claimed as an old state line——

A. You are mistaken about that. I misunderstood your question.

443rd Q. What is the distance from the point black W D in a red circle to your line opposite?

A. Just about 25 rods.

444th Q. You have just stated that at the points indicated on your map at black W C and black W. D, you were from 22 poles to 25 poles east of what is claimed as an old state line, while at the points indicated upon your map at red F 4, and at Mason & Dixon's line as points in an old state line, your line is from 69.33 poles to 70 poles west of an old state line. Will you explain how this could occur if your line and this supposed old line were both straight lines running north from a common starting point?

A. I cannot explain that matter. I do not know why that was.

445th Q. From the references taken by you to various points shown you on the ground as points in a supposed old state line, did you not find that they were not all in a straight line run northward from the Fairfax stone?

2955 A. I did.

Plaintiff here moves to strike from map No. 3 as prepared by the defendant all the tracts and subdivisions of tracts located thereon, which are also located upon map No. 1 and as to which specific motions have been made to strike said tracts from map No. 1, and also to strike from said map No. 3, the zigzag line which the defendant has undertaken to show as the eastern boundary of the various properties along said line, and likewise to strike from Map No. 2 the

same locations to the same extent as if this objection were again repeated in reference to said map No. 2.

Redirect examination by Mr. PRICE:

1st Q. With reference to the stone on the Northwestern pike, marked on your map as red C 13, do you remember who owns the tract of land in Maryland lying opposite that point?

Excepted to because said tract is not located upon the plat, nor was it located by the defendant upon the ground.

A. Francis Martin stated in my presence that he owned that land.

2nd Q. When was that said?

A. It was on October 1st, 1897, when he pointed out a certain thorn bush or stump to Mr. Brown.

3rd Q. Where is that thorn bush, and how is it designated on your plat?

A. It is designated by black W D—by a small circle and black W. D.

4th Q. And Mr. Martin pointed that out to Mr. Brown as what?

2956 A. As the place where the state line was run, and where the chainmen at that time had pulled the chain through the forks of a certain thorn bush now gone, and he also stated that that was a corner of his land and Offutt's, and a small stone planted on the north side of the Northwestern turnpike, and about 11 poles south east from the Michler monument was his corner.

5th Q. That small stone—is that the same that is designated on your map as red C 13?

A. It is.

6th Q. Where did Mr. Martin live?

A. He lived in Maryland.

7th Q. Where in Maryland?

A. Somewhere near that point.

8th Q. Did you understand that he lives on his land there—the land that he owns?

A. That is my recollection, although I am not sure about that—that he lived on that land.

9th Q. When Mr. Brown surveyed the Nonpariel tract, what did he find on the ground of the objects called for in the patent?

A. I have no memorandum of any measurements taken at the time this tract was run,— No marked trees corresponding to the patent.

10th Q. The patent calls to begin at three bounded hickory trees standing on west side of a hill 16¼ poles on the east side of the old road that leads from the Dunkard's glade to the Dunkard bottom. The above trees standing about 40 poles from meadow known as Snowey Glade, about two or three miles from Merley Glade; thence simply giving course and distance to the beginning. Now, did Mr. Brown find the three bounded hickory trees? Did he start from the three bounded hickory trees?

2957 A. He did not.

11th Q. Did you find the old road leading from Dunkard's Glade to Dunkard's bottom?

A. I have no note of that. I am not sure whether there was an old road there or not.

12th Q. What was there to show that you had found the beginning?

A. No object that I have any record of.

13th Q. If you did not start from the beginning correctly, then no part of the survey in located correctly, is it?

A. No, sir.

14th Q. In these Maryland grants that only call for one object at the beginning, and then run by course and distance, if you do not get the proper beginning, your whole survey is improperly located, is it not?

A. It is.

Excepted to as leading.

15th Q. Is there any way of locating a Maryland grant except by finding the beginning corner?

A. I do not know of any way.

16th Q. And if the witness who points out the beginning corner is either ignorant or false, or self-deceived, you may get the whole thing wrong, may you not?

A. Might do so; yes, sir.

17th Q. Now, where the object called for as the beginning of a Maryland grant like the Nonpariel is not found, then there is no way to retrace one of these Maryland grants, except by the testimony of some witness, who known where the point was? Is that true?

A. Yes, sir; I suppose that is true.

18th Q. What is the difference between the system of land grants as to the description of lands, under the Virginia laws and those of Maryland?

2958 A. The Virginia grants call for objects at the end of each and all of their lines as a rule.

19th Q. With the Virginia grants, therefore, if you could not find the beginning corner, but could find an object called for as one of the other corners, could you as a rule locate the grant?

A. You could; yes, sir, just as well from one corner as another.

20th Q. Now, in running the Maryland grant, you are governed entirely by course and distance, are you not, after you start from the beginning?

A. You are.

21st Q. In running a Virginia grant, what are you governed by?

A. By the objects as well.

22nd Q. Are you not bound to go to the object whether the course and distance will take you there or not?

A. Yes, sir; if the object is standing.

23rd Q. So that in locating a grant from the commonwealth of Virginia, if you find that the object on the ground called for is located so as to require a change of course and distance, you are obliged to do so, in order to locate the grant properly, are you not?

A. You are.

24th Q. Mr. Brown, having had no one to point out to him the beginning of Nonpariel, what assurance could he have that it was properly located?

A. He could only locate it from such information as he had from adjoining surveys.

25th Q. Now, certain of the surveys which you have located call for the Nonpariel. Have you located them with reference to the Nonpariel, and the Nonpariel with reference to them on the map?

2959 A. The Nonpariel was located with reference to the Deakins survey.

26th Q. Which Deakins is that?

A. It is the 6,000 acre, isn't it?

27th —. And how is the Deakins located?

A. It is laid down by protraction.

28th Q. From what?

A. From the description in the papers, and from known points.

29th Q. I believe you were asked by Mr. Sincell whether it was not often the case that surveys which call for each other overlap? Can that possibly occur, where a junior survey calls for an older and to run with it. Can they ever overlap either on paper or on the ground?

A. They must conform to the call of the older patent.

30th Q. So that in platting a survey which calls for another survey that is well located, can you properly and with safety lay it down on the map?

A. I think so.

31st Q. How would you do it?

A. By protraction—the lines being common.

32nd Q. Can it be anywhere else except located according to the common lines?

A. It cannot, under our system.

33rd Q. If a junior tract calls for a senior, and you find that the course and distance would overrun when you got to the lines of the senior tract, what do you do?

A. Stop.

34th Q. The call for the senior controls course and distance, does it not?

A. It does.

36th Q. Take the location of the tract called "Granary" as made by Mr. Brown on his map, and refer to the Deakins tracing—

2960 the tracing of the Deakins map of the military lots, and state whether there is space enough on Mr. Brown's map between the tract called Granary and the Pennsylvania line for the location of lots 2999, 2998, 2997, 2996, 2995, 2994, 2993, 2992, 2991, and 2987 according to their original certificates of award for those lots?

A. If these lots were laid down in the same relative position with reference to the tract Granary as that shown upon the Deakins map referred to there would be just about room enough to contain the ten lots between that tract and the Pennsylvania line.

36th Q. That is, if they were laid down so as to conform the western lines of the military lots with the western line of the Granary, there would be room enough?

A. Practically room enough.

37th Q. Now, suppose you were to lay down the lots north of the Granary in a common line with lot No. 2952, which Mr. Brown has laid down on his map, would there be room enough?

A. There would not.

38th Q. What would be the difference in the meridian line of the western boundary of lot No. 2952 as laid down by Mr. Brown and the tier of lots 2999 and others lying north of it above the Granary, if located with the western boundary conforming to the western boundary of the Granary as laid down by Mr. Brown?

Excepted to, because there is no call in the military lots for the Granary tract.

A. Approximately 110 poles.

39th Q. That is, the western line of lot No. 2999 would be 110 poles farther west than the western line of lot 2952 as laid down by Mr. Brown?

2961 A. It would.

40th Q. Looking at the tracing of the Deakins map of the military lots how does he show the western lines of lot 2952 as compared with 2999 and the lots lying north of it?

A. In one and the same line.

41st Q. Now comparing the location of the Granary with the Cherry Hill tract by Mr. Brown, about what point in the Cherry Hill tract is on a line with the western or fourth line of the Granary?

A. The end of the sixth line appears to be nearly south of the end of the third line of the Granary and a little east of south.

42nd Q. How is that on the Deakins map?

A. On the Deakins map the end of the fifth line appears to be in a line due south of the end of the third line of the Granary tract.

43rd Q. Comparing the position of the Granary with the Cherry Hill tract on the Brown map, and the position of the two tracts on the Deakins map, how much farther west has Mr. Brown located the Granary with reference to the Cherry Hill tract than Deakins located it?

Excepted to because there is no evidence that Deakins has located the Granary tract.

A. Approximately 110 poles.

44th Q. How does Mr. Brown's location of lot 2952 correspond with your location of that lot with reference to the Cherry Hill tract?

A. It is substantially the same.

45th Q. And on your map how have you located the western bounds of 2999 and the lots lying north of that with reference to the western bounds of 2952?

A. They are approximately in the same line.

2962 46th Q. And they are so on the Deakins map?

A. They are.

47th Q. In locating the Granary where did Mr. Brown begin?

A. He began at stone pointers pointed out to him as the beginning corner of the Granary by Isaac Myers.

48th Q. The patent for the Granary calls to begin at a bounded white oak. Was there any bounded white oak there?

A. Not at this time; no, sir.

49th Q. Was there any evidence of any?

A. None that I observed.

50th Q. It says, "Beginning at a bounded white oak standing near a spring at the head of a hollow, descending into Buffalo run, about four or five miles above the mouth of said run" — did Mr. Brown run the Buffalo run?

A. He did not.

51st Q. Do you know whether the point pointed out was four or five miles from the mouth of Buffalo run?

A. I do not; no, sir.

52nd Q. Were any steps taken to ascertain that?

A. No, sir, not that I know of.

53rd Q. Was there a spring at the head of a hollow?

A. I cannot say positively now whether there was or not. My impression is there was, near there.

54th Q. This says, "About twenty or thirty perches from a path that leads from Richard Hall's to the meeting house on Sandy Creek glades." Did you find any such path?

A. I did not.

55th Q. Do you know of any such path?

A. I do not.

56th Q. Then it says, "About a mile and a half westwardly
2963 of said Hall's house." Was there any evidence of where Hall's house stood?

A. Not that I am aware of.

57th Q. Then the only evidence Mr. Brown had, so far as you know as to the correct location of the Granary was the statement of a man by the name of Myers that he had been informed by certain people that that was the beginning of the Granary?

A. He stated that it had been pointed out to him as the Granary by David Kent and Lemuel Savage.

58th Q. Was there any way by the subsequent running of that tract in which you could locate its courses and distances—I mean, its lines on the ground? Did you find any trees or corners or marked lines indicating anciently marked lines?

A. We found a stake in a line fence near a large white oak at the end of the first line. Of course the ancient marks were not there.

59th Q. The first line does not call for a white oak does it?

A. I think not.

60th Q. So there was nothing in the fact that a white oak stood there to show that it was the original point?

A. I presume that was the white oak in some line. It was marked, at least.

61st Q. Is this the same Isaac Myers who pointed out a point in the old state line?

A. It is.

62nd Q. Where is that point designated on your map?

A. It is designated on the map by red H 3 and black W. L. The points are almost coincident.

63rd Q. According to your location of the Granary, where is that point with reference to the western line of the Granary?

2964 A. It would be some forty or forty two rods west.

64th Q. According to your location?

A. Yes, sir.

65th Q. That is, that point W L would be forty two rods west of the western line of the Granary as located by you?

A. Yes.

66th Q. Where would it stand with reference to the western line, as located by Mr. Brown?

A. It would stand approximately seventy rods east of the western boundary of the Granary.

67th Q. And it is inside the Granary that distance, is it not?

A. Yes, sir.

68th Q. According to that location, the old state line then would cut off from the Granary a portion some seventy rods wide from the western side and throw it into the state of Virginia? Is that right?

A. Yes, sir.

69th Q. Now, those lots 2999, 2998, and 2997—were they located by you solely with reference to their relation to the Granary or to something else?

A. They are located with reference to a white oak pointed out to me by Marshal Fike.

70th Q. That is at the point red H 8, is it?

A. At the point marked "W O" on the map.

71st Q. Just north of the point H 8 then?

A. Yes, sir.

72nd Q. Now, if those lots then are correctly located, and if Deakins correctly located the Granary with reference to those lots, how does your location compare with his?

A. It would be practically the same.

2965 73rd Q. If you adopt Mr. Brown's location of the Granary, but lay the military lots north and south of the Granary and north and south of Cherry Hill, so that their western boundaries will be practically in a due north line, would the lots 2999, 2998, etc., still remain located as you have located them on your map?

A. They would practically so.

74th Q. And in that case, would they conflict with the Granary?

A. No, sir.

75th Q. How would they stand with relation to the Granary?

A. They would still adjoin or practically so, but at a different point in the line.

76th Q. On the Deakins map, how many lots are between the Granary and Cherry Hill?

A. Three.

77th Q. What are they?

A. 2954, 2957 and 2958.

78th Q. Those three lots, how do they appear with reference to their western lines, as applied to the Cherry Hill tract?

A. You mean on the Deakins map.

79th Q. On the Deakins map?

A. They are practically the same.

80th Q. That is, they appear the same on the Deakins map as on yours is what you mean, with reference to the Cherry Hill?

A. Yes, sir.

81st Q. On the Deakins map, how does lot 2958 conform to the Granary?

A. It adjoins on the Deakins map, seems to have a common line with the Granary tract?

2966 82nd Q. Its northern line is common with the southern line of the Granary? Is that right?

A. Yes, sir.

83rd Q. Coextensive with it?

A. Yes.

84th Q. Now, according to your location, does the Granary adjoin up with that lot 2958?

A. It does not.

85th Q. If you shove the Granary south so as to unite with that lot 2958 on the same line, would you have room enough to put in all the military lots shown by Deakins on his map between the Granary and the Pennsylvania line?

A. About so, you might say.

86th Q. Now, according to Mr. Brown's location of the Granary, how does the lot 2958 correspond with the southern line of the Granary?

A. It does not correspond.

87th Q. If those three lots were placed between Cherry Hill and the Granary on Mr. Brown's map, so as to make the northern line of lot 2958 and the southern line of the Granary conform, would the lot 2954 fit the Cherry Hill tract, as it is on the Deakins map?

A. It would not.

88th Q. Lot No. 2954 is described in the original certificate of award as follows: "Beginning at the end of 50 perches on the fifth line of Cherry Hill, and running north 96 perches, west 27 perches, south 8 perches, west 90 perches, south 41 perches, then by a straight line to the beginning. Which is the fifth line of the Cherry Hill tract?

A. The line numbered 5 on Mr. Brown's map.

89th Q. And which is that with reference to the points of the compass?

2967 A. It is the northeastern line on the tract.

90th Q. Now, the way you have located 2954 on your map,

did you locate the beginning of it at the end of 50 perches on the fifth line of the Cherry Hill?

A. I did.

91st Q. If you locate that lot that way on Mr. Brown's map, and then join 2957 and 2958, so as to make their western boundaries conform, would the northern line of 2958 conform to the southern line of the Granary?

A. It would not.

92nd Q. Mr. George D. Evans, who was examined as a witness on behalf of the State of West Virginia in this cause testified that he is the owner of the tract of land which was patented to Isaac James, a certified copy of which patent is filed with his evidence, and which you have located on the map. He further testifies that that tract lies entirely east of the Michler line, and that the old Maryland line forms the eastern boundary of that tract of land. Have you located that tract of land, that Isaac James tract, in accordance with that testimony of George D. Evans?

A. I have.

93rd Q. Now, as located, does it cover any part of the Granary as Mr. Brown locates the Granary?

A. It does.

94th Q. Does it go beyond the point W. L, which was pointed out by Isaac Myers as in the old state line?

A. No, sir.

95th Q. Does it conform to that point?

A. Practically so. That line in which that point is located is the division line between his lands and the lands eastward.

2968 96th Q. Was there any one living on that piece of land at the time you were there?

A. I cannot say about that.

97th Q. Mr. Evans testifies that the line ran by you in 1894 ran east of the house, and that George Taylor at that time lived on the land. Have you any recollection about that?

A. I have no recollection as to this house.

98th Q. With reference to the tract containing 1247 acres, conveyed by John Hoye to Jacob Crane, what reason had you for locating it as you did?

A. It contained parts of the 6,000 acre and the John Hoye 3600 acre tracts, and some other land, and called to adjoin the Burchinal road on the north, and the eastern line of the 6000 acre tract, and a certain chestnut was called for as a corner at the old Burchinal road, I found while running this reference line an old stump, which I thought to be the corner called for, on the south side of the road.

99th Q. That is the chestnut stump marked on the map, D 16?

A. Yes, sir.

100th Q. Does the 1247, as located by you cover parts of the Deakins 6,000 and the Mertin and Hoye 3600?

A. It does.

101st Q. Where is the dividing line between those two tracts as you have indicated it on the map?

A. The line D 15 and D 13.

102nd Q. What is the northern boundary of this 1247 acres, as laid down on your map?

A. The southern lines of the tract marked Thomas Brown, 490, are common lines with the northern boundary of this 1247
2969 acres, and the northeastern boundary is the old Burchinal road, which is laid down approximately as given in the bearings.

The plaintiff moves to strike defendant's location of the Jacob Crane 1247 acres from all of the maps made by the defendant in this cause.

103rd Q. There are a large number of tracts—of subdivisions of land laid down on your map about which you have been specifically interrogated as to their method of location. In your examination in chief, you stated that you visited the houses and made copies of the deeds and other title papers of the people living between the Michler line and the line run by Mr. Brown in 1897. I believe you were not asked as to what papers, if any, you used in making the locations on your map. I do not mean specifically, but I am speaking generally.

A. No, I believe I was not asked the question.

104th Q. Will you state, generally speaking, from what papers, if any, these tracts of land between the Michler and Brown lines were located.

Exception to the question as incompetent.

A. They were laid down in some cases from original title papers in my possession, and in others from the copies from the originals where I could get them, and copies secured from the surveyor's offices in Preston and Monongalia counties.

105th Q. How did you determine the points upon the map upon which to locate these tracts?

A. They were located from known points on the map, protracted, joined together in that manner, and then laid down as accurately as possible to conform to known points of the map.

2970 106th Q. To what extent did you find people living on the tracts of land which you have located between those lines?

A. There was some one on almost all the tracts.

107th Q. Now, how have you located those tracts with reference to the locality of the houses where you found the people living, whose names appear upon these tracts on the map?

Excepted to.

A. There were houses on these tracts where so located, that is some portion of the tracts at least—in most cases.

108th Q. Were any reference lines run to these houses?

A. There were, to a few of them, those on the original survey I believe ran reference lines——

109th Q. I am not speaking of that, I mean, between the Michler and the Brown lines.

A. No, sir. I did take a note in many instances where the Brown

line crossed property lines. Wherever we could secure that information, I noted it.

110th Q. Then these locations which you have made of these tracts of land—what is your judgment as to the accuracy of their location, as compared to the Brown line, the Michler line, and adjacent property?

Excepted to.

A. I consider them substantially correct as laid down.

111th Q. How long would it have taken to have surveyed out every tract of land, running the exterior lines, finding the corners, and the lines on the ground of every tract of land which appears upon your map, with subdivisions?

A. Several years, I should think.

112th Q. A report of such a survey would be a somewhat voluminous document, would it not?

2971 A. It would.

113th Q. Referring to that part of the territory lying north of the Granary—northwest—what was there, if anything, upon the ground to indicate the holdings of the people in West Virginia and in Maryland respectively as between them?

A. There was a fence from the point as far south as H 4, to a point somewhere north of H 6 on the line as represented between those points.

Excepted to, because no fence is located upon the plat between the points mentioned.

114th Q. Did it extend any further north than H 6?

A. It was somewhat farther north than that, but I do not recollect just how far. I am not sure whether it extended clear to the Pennsylvania line or not. In most instances, along the lines as they are given, there were fences—boundary line fences.

Mr. SINCELL: This testimony is further excepted to, because said fences were not located upon the ground.

Recross-examination by Mr. SINCELL:

1st Q. Did not Isaac Myers, the witness produced upon the ground at the location of the Granary tract point out a stone as standing where the white oak tree had formerly stood, the original beginning of said tract?

A. (Refers to memorandum.) Isaac Myers pointed out this stone to Mr. Brown, and stated that this point was shown to him by David Kent and Lemuel Savage as the point sworn to by John Sharkey, who had seen a bounded white oak then down, as the beginning of said Granary.

2972 2nd Q. In locating the trac of land called Nonpariel did not Mr. Brown establish by actual survey upon the ground said beginning by obeying the calls in the Frances and William Deakins survey of 6000 acres.

Objection to the question, because it calls upon the witness to decide whether Mr. Brown obeyed the calls of the patent.

A. Mr. Brown fixed this beginning point by running certain lines of the Deakins survey.

3rd Q. And does not the Deakins survey call to run west 590 perches to a tract of land patented by the State of Maryland called Nonpariel?

A. It does.

4th Q. Does it not further call to run with the following lines of Nonpariel, (Reads) reversed, south 114 perches to the beginning tree of said land called Nonpariel?

A. It does.

5th Q. Did not Mr. Brown run that line by actual survey upon the ground?

A. He did.

6th Q. Then did he not run to the beginning of Nonpariel as called for in the 6000 acre Deakins survey?

A. He ran to a point that should have been the beginning.

Redirect examination by Mr. PRICE:

1st Q. I hand you herewith a list of names of tracts of land set forth in it, with the certificate endorsed thereon, of George A. Wells, clerk of the County Court of Preston county, in which he certifies, "The following persons, among others, are assessed with real
2973 estate in the second assessment district of said county," and I ask you to file the same with your deposition.

A. I will do so, marked "Monroe Ex. No. 69."

Mr. SINCELL: The introduction of this paper is excepted to, by the plaintiff, as irrelevant and incompetent testimony.

2nd Q. I will ask you to state what knowledge you have as to the residence of the parties named in that list, and of the location of the tracts of land there enumerated?

Exception.

A. I recognize a number of the names of the parties in this list as owning land along and near the Maryland line, in Preston county, West Virginia.

3rd Q. Speaking generally, what would be your judgment as to where the lands mentioned in that list are located?

Excepted to.

A. Generally they are located between and along the line run by Mr. Brown from the stone marked "Potomac 1897," and the old state line.

4th Q. Will you indicate with the red letter "M" opposite each name that you recognize as tracts of land lying in that territory, from your knowledge of the people and the holdings of the land there.

Excepted to as irrelevant and incompetent.

A. I will.

And further this deponent saith not.

2974 8 O'CLOCK, P. M., *July* 31, 1906.

U. N. ORR, a witness produced on behalf of the State of West Virginia, having been duly sworn, testified as follows:

(By Mr. PRICE:)

1st Q. Please give your name, your age, your residence and your occupation.

A. U. N. Orr; Kingwood, West Virginia.

2nd Q. Your age?

A. Age 74 years.

3rd Q. What about your occupation?

A. Part owner and operator in a coal mine.

4th Q. Have you had anything to do with the valuation of the lands in Preston County, West Virginia?

A. Yes, sir.

5th Q. What.

A. I was the assessor appointed by the Governor, I guess, to revalue the lands in Preston County in the year 1905.

6th Q. Did you reassess the lands in the eastern part of Preston county along the line of Garrett county, Maryland?

A. Yes, sir.

7th Q. Was that assessment incorporated into a book?

A. Yes, sir.

8th Q. What was done with the books, the assessment book?

A. I returned one to the Auditor, one to the State Tax Commissioner, and one to the Clerk of the County Court.

9th Q. Of Preston County?

A. Of Preston County, yes, sir.

10th Q. Who is now the Clerk of the County Court of Preston County?

A. George A. Walls.

2975 11th Q. Will you look at the list which I now hand you, and which was filed with the testimony of Julius K. Monroe as Exhibit No. 69, and state, if you know, how that list was made up?

A. I have examined it. I suppose this list was made up from —I see the lands here that I marked on the land book of Preston county, and I suppose this was copied off of it.

12th Q. At whose instance did you mark those tracts of land on the land book?

A. At your request. I think it was you that got me to do it.

13th Q. Now, upon examining that list, what does it contain, speaking generally?

A. It contains the land along the eastern border of Preston county, adjoining the Maryland line.

Excepted to.

14th Q. Have you any acquaintance with the people who live along in that section of the country?

A. Yes, sir, I know a good many of them, I am not acquainted with near all of them, but I am with a good many of them.

15th Q. Have you been in that section of the county?

A. I was all through there when I made the assessment and I formerly owned about 1500 or 2000 acres right on the line.

16th Q. This list then—do you recognize in it the names of the people that live along that territory?

A. Yes, sir.

17th Q. And what about the tracts of land?

A. What do you mean, about the value of them?

18th Q. No, I mean from the knowledge that you gained of the different tracts of land along that section of the county, in
2976 making the reassessment and in other ways, do you recognize the tracts of land in that list as tracts lying along that line in that section?

Excepted to.

A. Yes, sir, a majority of them. There might have been some small tracts, you know, that there was no owner lived on, or something of that kind.

19th Q. What, if anything, did you have as a guide to assist you in making that reassessment?

A. Why, the land that was formerly on the old land books. That was the land that I looked after.

20th Q. And what is your recollection as to whether these tracts in this list were or were not on the old land books?

A. They were on the old land books.

Cross-examination waived.

Further this deponent saith not.

(The taking of these depositions is concluded Tuesday evening, July 31st, 1906).

2977 STATE OF WEST VIRGINIA,
County of Preston, To wit:

I, R. W. Monroe, a Notary Public of the county and state aforesaid, do hereby certify that the foregoing witnesses, A. M. Fike, H. A. Shafer, Denial J. Nordeck, Ross Cuppet, D. B. Groves, William G. Brown, Marcellus Albright, C. H. Loar, Wesley De Berry, A. J. Elliott, H. J. Frear, U. N. R. Orr and Julius K. Monroe were duly sworn, and their depositions taken before me, at the several times and places hereinbefore mentioned, pursuant to the stipulation of counsel hereto attached, having been adjourned from time to time and day to day as therein stated.

In testimony whereof I have hereunto signed my name, and affixed my official seal, this 31st day of July, 1906.

[SEAL.] ROBT. W. MONROE,
Notary Public.

2978 (Endorsed:) The State of Maryland *vs.* The State of West Virginia. In the Supreme Court of the United States. In Equity. Defendant's deposition, taken at Kingwood, Preston County, West Virginia, July 19th to July 31st, 1906.

Supreme Court U. S. No. 1, Original. October Term, 1907 Maryland *v.* West Virginia. Filed October 15, 1907. James H. McKenney, Clerk.

2979 Book 78, Page 371.

Deed.

This Deed, Made this 6th day of December, 1895, by J. Ami Martin, Clerk of the County Court of Preston County, in the State of West Virginia, of the first part, and A. D. Bowman, Wm. G. Brown and T. Pickenpaugh, of the second part.

Whereas, In pursuance of the statute in such case made and provided, Leroy Shaw, Sheriff of the said County, did, on the 11th day of December 1893, that being the first day of the term of the Circuit Court of said County in that year, commence to expose to public sale at the door of the Court-house of the said County, between the hours of ten in the morning and four in the afternoon, the real estate heretofore returned delinquent for the non-payment of the taxes due thereon in the said County of Preston, and

Whereas, At the sale so made as aforesaid, on the 11th day of December, 1893, the said Bowman, Brown and Pickenpaugh became the purchaser- of a tract of twelve hundred and thirty and three fourth- acres of land, being a part of a tract of 1528¾ acres, situate in the said County, which formerly belonged to and was returned delinquent in the name of David Hoye's heirs for the non-payment of the taxes charged thereon for the years 1891 and 1892 for the sum of $90.77, that being the amount of taxes, interest, damages and commissions due thereon at the time of said sale, including fee for receipts, and Whereas, More than one year has elapsed since the date of the said sale, and the said real estate not having been redeemed as provided for by law, and

Whereas, After the expiration of the said one year, to wit: On the 5th day of December, 1895, the said Bowman, Brown and Pickenpaugh, in the manner prescribed by law, caused a report to be made to the Clerk of the County Court of the said County, specifying the metes and bounds of the said tract of land so purchased as aforesaid, and giving such description thereof as is sufficient to identify the same, and there being no valid objection to said report, the same was on the 5th day of December, 1895, ordered by the said Clerk to be recorded in his office, and a record thereof has been made
2980 accordingly, to which report now remaining in the office of the Clerk of the County Court of the said County of Preston, reference is here had.

Now, therefore, This Indenture Witnesseth: That for and in consideration of the premises the party of the first part has bargained and sold and by these presents doth grant, bargain, sell and convey unto the party of the second part, his heirs and assigns forever, the real estate aforesaid, situate in the County aforesaid, lying between the New and Old Maryland Line, in "Pine Swamp," Portland District, and that from the Plats of the Hoye land and from the Grant of the H. Martin and Jno. Hoye land the boundaries are found to be as follows, to wit:

Beginning at a Cherry and Maple, corner to McClary and Danks tract; thence East 250 poles to a Maple; thence S. 1280 poles; thence

East 380 poles to the Old Maryland line; thence with the same N. 1550 poles to McClaine's line; thence West 180 poles to a Maple; thence S. 25 E. 23 poles to a Cherry; thence S. 43 E. 83 poles to a Cherry; thence S. 66 W. 136 poles to two Maples and two White Oaks; thence N. 67 W. 100 poles to a Cherry; thence S. 58 W. 343 poles to the beginning, which survey contained 3600 acres; but the portion of said survey lying West of the "New Maryland Line," having been formerly sold, this purchase includes the portion of said survey lying between the Old and the New Maryland Line, within said survey, and supposed to contain twelve hundred and thirty acres (1230) more or less; To have and to hold the said real estate with its premises and appurtenances unto the said Bowman, Brown and Pickenpaugh, their heirs or assigns forever.

Witness the following signature and seal.

J. AMI MARTIN, [SEAL.]
Clerk of the County Court of Preston Co.

2981 STATE OF WEST VIRGINIA,
County of Preston, To wit:

I, Geo. A. Walls, a Notary Public for said County, certify that J. Ami Martin, Clerk, whose name is signed to the foregoing deed, dated December 6th, 1895, has this day acknowledged the same before me in my said County.

Given under my hand, this 6th day of December, 1895.

GEO. A. WALLS,
Notary Public.

STATE OF WEST VIRGINIA,
County of Preston, To wit:

On the 6th day of December, 1895, the foregoing writing with certificate thereto, was produced to me in my office, and therein admitted to record.

Teste:

J. AMI MARTIN,
Clerk County Court, Preston Co.

A copy from the record.
Attest:

GEO. A. WALLS, *Clerk.*

Endorsed: Deed. J. Ami Martin, Clerk, to A. D. Bowman, Wm. G. Brown, & T. Pickenpaugh. Maryland *vs.* West Virginia. Wm. G. Brown. Exhibit A. Copy $1.00.

2982 (Copy.)

This Indenture, made this 15th day of August in the year of our Lord eighteen hundred and forty-six, by and between John Hoye of Allegany County and State of Maryland of the one part and Jacob Crane of Preston County and State of Virginia of the other part—Witnesseth, that for and in consideration of the sum of six hundred and twenty-three dollars and fifty cents to be paid in six annual payments from the first day of October, eighteen hundred and forty-six,

and for which the said Jacob Crane has executed six promissory notes payable to the said John Hoye, and it is agreed by the said John Hoye and Jacob Crain that said notes shall be a lien or mortgage on the two tracts or parts of two tracts of land hereinafter described until all of said notes shall be fully paid off and discharged, All of said notes *is* dated on the 15th day of August, 1846, and each note for the sum of one hundred and three dollars and 91½ cents and one payable the 1st October, 1847, one payable the 1st October, 1848, one payable the 1st Oct'r, 1849, one payable the 1st October, 1850, one payable the 1st October, 1851, and one payable the 1st October, 1852, the said John Hoyle has bargained and sold and by these presents doth bargain and sell unto the said Jacob Crane, his heirs and assigns the following described part of two tracts of land, which lap and run on each other, 800 acres, part of a tract of land patented to Frances and William Deakins 22 September, 1789, and was sold by said Frances and Wm. Deakins to Wallace Johnson and Muir, and was assigned by and apportioned by the circuit superior court of law and chancery of Harrison county, Va., to John Murray, the heir of John Muir, and at his decease the land fell to his
2983 brother George Murray, who sold and conveyed to James D. Armstrong, who sold and conveyed to John Hoye, and the other 447 acres is a part of a tract of land of 3600 acres granted to Honore Martin and John Hoye, and which the said John Hoye purchased, the parts of said two tracts of land now [illegible] said John Hoye to said Jacob Crain contains together 1247 acres of land, more or less, and is bounded as follows: Beginning to include the parts of the two tracts sold *to* John Hoye to said Jacob Crane situated on the Right Hand Fork of Snowey Glade Creek formerly in Monongalia but now in Preston County, Virginia, near Betty's Glade beginning at a chestnut and pointers standing at the end of 118 poles on the 47 line of Deakins tract of 6000 acres as patented to them, and running with the 8th line of Frances Deakins survey of 429 acres corrected N. 83 W. 66 po. to the 2nd line of a survey of 396 acres made for Henry Hawk, and with said line reversed N. 2 E. 210 poles to a white oak at the end of the first line of Hawk's said survey of 396 acres, and is beginning of a survey of 276 acres made for Levy Beatty, it was a chestnut tree called for but the chestnut is down and there is a white oak marked, thence with Levy Beatty's first line corrected to the corner N. 7 E. 37 poles to a white oak, thence with his second line N. 31 E. 160 poles to a white oak, his corner, and is at the corner of David Parson's fence, thence leaving Beatty's survey of 276 acres and running with the lines of a survey made for William W. Hoye as run by John Royse of 720 acres S. 47 E. 26 poles, to a white oak N. 73 E. 60 poles to a white oak S. 24½ E. 66 poles to a stone heap, and pointers S. 79 E. 32 poles to a chestnut, N. 51 E. 42 poles to a white oak, N. 12 W. 35 po. to a rock and pointers, thence N. 57 E. 100 poles to the Burchinal road near two bounded white oaks on the South Side of said road, then running with said road S. 27 E. 86 poles, S. 69 E. 12 ps., S. 58½ E. 28 ps., N. 83 E. 12 ps. S. 54 E. 16 ps. N. 13 E. 12 ps. S. 69 E. 14 ps. N. 79 E. 10 ps. S. 76

E. 6 ps., S. 56 E. 14 ps., S. 44 E. 12 ps., S. 28 E. 16 ps. S.
2984 22 E. 14 ps. S. 81 E. 14 ps., S. 59½ E. 28 ps., S. 20½ E. 18 ps., S. 2 E. 18 ps., S. 22 E. 36 ps., S. 73½ E. 40 ps., S. 53 E. 2 ps. to a bounded chestnut on the south side of the Burchinal road and on the Maryland line as run by Reuben Morris, and with the Maryland line south 204 poles to pointers on the said line and to intersect a line run due east from the beginning of this deed, and with it reversed west 451 poles to the beginning, containing 1247 acres, more or less,

To have and to hold the above described two pieces of land, being parts of two tracts of land, and containing together 1247 — together with their appurtenances and heriditaments to him the said Jacob Crain and his heirs forever, and the said John Hoye for himself doth further agree to and with the said Jacob Crain, his heirs and assigns that he, the said John Hoye, will warrant and defend the aforesaid described 1247 acres of land unto the said Jacob Crain against all persons claiming any legal title thereto.

In witness whereof the said John Hoye hath hereunto set his — and affixed his seal the day and year first hereinbefore written.

JOHN HOYE. [SEAL.]

PRESTON COUNTY, *To wit:*

We, Abraham Jeffries and John Elsey, two justices — the peace in and for said county, in the State of Virginia, do hereby certify that John Hoye, party grantor to the within deed, personally appeared before us in our county aforesaid, and acknowledged the same to be his act and deed, and desired us to certify the same to the clerk of the county court of Preston that the same may be recorded.

Given under our hands and seals this — day of August, eighteen hundred and forty-six.

ABRAHAM JEFFERS, *J. P.* [SEAL.]
JOHN ELSEY, *J. P.* [SEAL.]

2985 VIRGINIA:

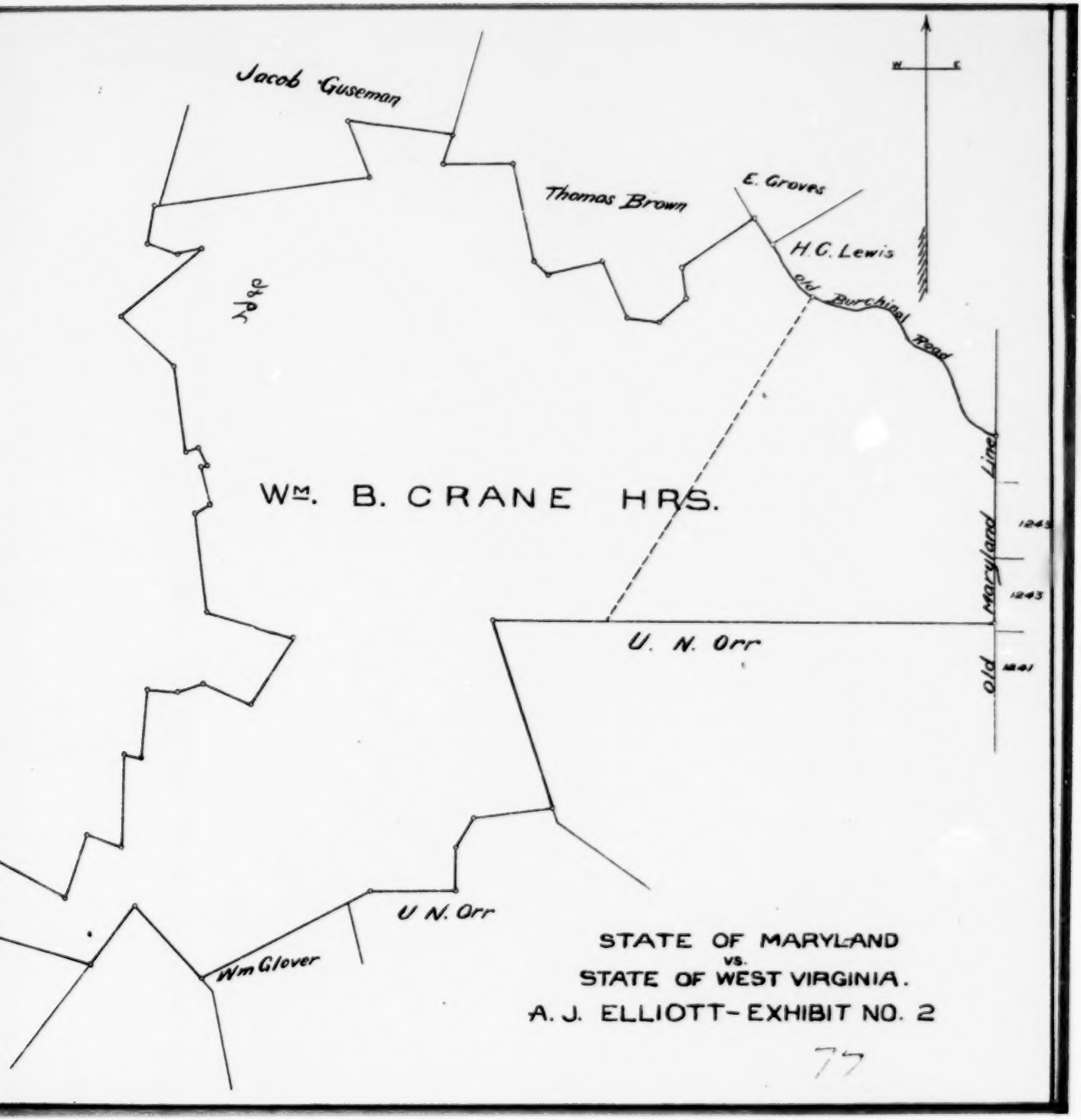
Be it remembered, that on the 1" September, 1846, this deed was produced to me Smith Crane, deputy for John P. Byrne, Clerk of the County Court of Preston in my office, duly certified and admitted to record.

SMITH CRANE.

The Following endorsement is on the back:
John Hoye to Jacob Crane. Deed. Recorded, Book 7, page 288. Jno. P. Byrne, Cl'k. 1" Sept. 1846.

STATE OF WEST VIRGINIA,
County of Preston, To wit:

The foregoing is a correct copy of a Deed from John Hoye to Jacob Crane, filed before me with the depositions of A. J. Elliott, in


Jacob Guseman
Thomas Brown
E. Groves
H.C. Lewis
Old Burchinal Road
Wm. B. CRANE HRS.
Maryland Line
1245
1243
1241
U. N. Orr
U N. Orr
Wm Glover
STATE OF MARYLAND
vs.
STATE OF WEST VIRGINIA.
A. J. ELLIOTT - EXHIBIT NO. 2
77

the case of State of Maryland *vs.* State of West Virginia, Marked Elliott Exhibit No. 1.

[SEAL.] NEIL J. FORTNEY,
Notary Public of Preston County, West Virginia.

Endorsed: Copy Deed. John Hoye to Jacob Crane. August 15th, 1846. Maryland *vs.* West Virginia. Elliott Exhibit No. 1.

2986 (Here follow maps marked Elliott Exhibit No. 2 and Frear Exhibit A.)

[Endorsed on back of map.]

77

Map of Kunkle Land.

Maryland *vs.* West Virginia.

FREAR EXHIBIT A.

(Here follows map marked Monroe Exhibit No. 1.)

2987 MONROE EXHIBIT No. 2.

John Turton Goff, 1000 Acres, Monongalia Ex'd.

Beverly Randolph, Esquire, Lieut. Governor of the Commonwealth of Virginia, to all to whom these presents shall come, Greeting:

Know ye, That by virtue and in consideration of a preemption treasury warrant, No. 2298, issued the 16th day of October, 1782, there is granted by the said Commonwealth unto John Turton Goff a certain tract or parcel of land containing 1000 acres by survey bearing date the 16th day of November, 1782, lying and being in the county of Monongalia on the headwaters of Yohogania river, joining the lands of Zarah Osborns, and John Petty, John, and bounded as followeth, to wit: Beginning at a white oak corner to Zarah Osbourns & John Petty John & running with Pettyjohn's lines E. 28 poles to a white oak N. 52° E. 44 poles to a white oak N. 178 poles to a maple N. 21½° E. 72 poles to pointers N. 34 poles to a hickory S. 70° E. 68 poles to a red oak S. 40° E. 20 poles to a cherry tree on a branch of Yohogania S. 80° E. 34 poles to a cherry tree S. 47½° E. 78 poles to a white oak in the Maryland line corner to the said Pettyjohn's thence N. with the said line 400 poles to a white oak S. 70° W. crossing Yohogania 520 poles to pointers corner to said Goff's other survey thence with said line S. 26° E. 484 poles to pointers corner to the aforesaid Osborns & with his line, the same course continued 508 poles to the beginning with its appurtenances.

To have and to hold the said Tract or Parcel of Land, with its appurtenances, to the said John Turton Goff and his heirs forever.

In witness whereof, The said Beverley Randolph, Esquire, Lieut. Governor of the Commonwealth of Virginia, hath hereunto set his hand and caused the Lesser Seal of the said Commonwealth to be affixed at Richmond, on the 26th day of June, in the year of our Lord one thousand seven hundred and 87, and of the Commonwealth the 11th.

[SEAL.]

B. RANDOLPH.

2988 STATE OF WEST VIRGINIA.

Auditor's Office, City of Charleston, To wit:

I, A. C. Scherr, Auditor of the State of West Virginia, do hereby certify that the foregoing is a true copy of a paper, purporting to be a grant from the State of Virginia to John Turton Goff dated the 26th day of June, 1787, on file in said Auditor's office among the certified copies of records received from the office of the Register of the Land office at Richmond, Virginia, and deposited in the said Auditor's Office, under Acts of the Legislature of West Virginia, passed February 24th, 1893, and February 20th, 1897.

Given under my hand and official seal, at Charleston, W. Va., this 20th day of July, 1906.

[SEAL.]

A. C. SCHERR, *Auditor.*

2989 MONROE EXHIBIT No. 3.

John T. Goff, 868 Acres, Monongalia Ex'd.

Beverly Randolph, Esquire, Lieutenant Governor of the V Commonwealth of Virginia, to all to whom these presents shall come, Greeting:

Know ye, That by virtue and in consideration of a Land Office Treasury Warrant No. 14,703, issued the 24th day of October, 1782, there is granted by the said Commonwealth unto John T. Goff, a certain tract or parcel of land containing 868 acres, by survey bearing date the 24th day of December, 1782, lying and being in the county of Monongalia adjoining the lands of said Goff and below it on the waters of Yohogania river, and bounded as follows, to-wit: Beginning at a white oak corner to said Goff's other survey and running N. 320 poles to a forked maple, thence W. 120 poles to a spruce pine, N. 30 poles to pointers, S. 70 W. 160 poles to pointers, S. 18 W. 590 poles to pointers in the line of said Goff's other survey and with said line N. 70 E. 438 poles to the beginning, with its appurtenances.

To have and to hold the said tract or parcel of land with its appurtenances to the said John T. Goff and his heirs forever.

In witness whereof the said Beverly Randolph, Esquire, Lieut. Governor of the Commonwealth of Virginia, hath hereunto set his hand and caused the Lesser Seal of the said Commonwealth to be affixed at Richmond on the 26th day of June, in the year of our Lord one thousand seven hundred and eighty-seven and of the Commonwealth the 11th.

[SEAL.] B. RANDOLPH.

2990 STATE OF WEST VIRGINIA,
Auditor's Office, City of Charleston, W. Va., To wit:

I, A. C. Scherr, Auditor of the State of West Virginia, do hereby certify that the foregoing is a true copy of a paper, purporting to be a grant from the State of Virginia to John T. Goff dated the 26th day of June, 1787, on file in the Auditor's office among the certified copies of records received from the office of the Register of the Land office, at Richmond, Virginia, and deposited in the said Auditor's office, under Acts of the Legislature of West Virginia, passed February 24th, 1893, and February 20th, 1897.

Given under my hand and official seal, at Charleston, W. Va., this 20th day of July, 1906.

[SEAL.] A. C. SCHERR, *Auditor.*

2991 MONROE EXHIBIT No. 4.

John T. Goff, 500 Acres, Monongalia Ex'd.

Henry Lee, Esquire, Governor of the Commonwealth of Virginia, to all to whom these presents shall come, Greeting:

Know ye, That by virtue and in consideration of part of a Preemption Treasury Warrant No. 2261 issued the 16th day of October, 1782, there is granted by the said Commonwealth unto John T. Goff, Assignee of Thomas Goff Assignee of William Ashby who was assignee of Zachariah Piles, a certain tract or parcel of land Containing 500 acres by survey bearing date the 15th day of September, 1787, lying and being in the county of Monongalia adjoining the Maryland line and on N. side of lands surveyed for said Goff and bounded as followeth, to wit, Beginning at a maple corner to his other lands and on the Maryland line and running with said line N. 160 poles to a hickory W. 388 poles S. 366 poles E. 56 poles to a line of his other survey and with 4 lines thereof N. 18° E. 216 poles to pointers N. 70° E. 160 poles to pointers S. 50 poles to a spruce pine. E. 120 to the beginning with its appurtenances.

To have and to hold the said Tract or Parcel of Land, with its appurtenances, to the said John T. Goff, and his heirs forever.

In witness whereof, The said Henry Lee, Esquire, Governor of the Commonwealth of Virginia, hath hereunto set his [SEAL.] hand and caused the Lesser Seal of the said Commonwealth to be affixed at Richmond, on the 19th day of June in the year of our Lord one thousand 7 hundred and 92 and of the Commonwealth the 16th.

HENRY LEE.

2992 STATE OF WEST VIRGINIA,
Auditor's Office, City of Charleston, To wit:

I, L. M. La Follette, Auditor of the State of West Virginia, do hereby certify that the foregoing is a true copy of a paper purporting to be a grant from the State of Virginia to John T. Goff Assignee of Thomas Goff, Assignee of Wm. Ashby, dated the 19th day of June, 1792, on file in said Auditor's office among the certified copies of records received from the office of the Register of the Land office at Richmond, Virginia, and deposited in the said Auditor's office, under Acts of the Legislature of West Virginia, passed February 24th, 1893, and February 20th, 1897.

Given under my hand and official seal, at Charleston, West Virginia, this 8th day of September, 1899.

[SEAL.] L. M. LA FOLLETTE, *Auditor.*

2993 MONROE EXHIBIT No. 5.

Archibald Chisholm, His Patent, "Eel Shine," 79½ Acres.

The State of Maryland to all persons to whom these presents shall come, Greeting:

Know Ye, that Whereas Archibald Chisholm of Allegany County had surveyed and laid out for him a tract or parcel of land called "Eel Shine," lying in the County aforesaid and containing seventy nine and a half acres, by virtue of a Common Warrant for five acres granted out of the Land Office on the twenty sixth day of July eighteen hundred and forty eight, upon which the said Archibald Chisholm fully compounded according to Law:—

The State of Maryland doth therefore hereby Grant unto the said Archibald Chisholm the said tract or parcel of Land called *"Eel Shine,"* in the County aforesaid.

Beginning at the end of the first line of Lot No. three hundred and sixteen, and running thence South, twenty six degrees West, ninety perches to the Virginia and Maryland line, then with said line North, three hundred and eighty four perches to a bounded sugar tree; then East, thirty eight perches; South, one hundred and eighty four perches; South sixty four degrees West, ten perches; South twenty one degrees East, twenty perches; South, five degrees West, thirty eight perches; South, seventy four degrees East, six and a half perches; South, forty eight perches to the beginning—

Containing seventy nine and one half acres, to be held by the name of *"Eel Shine,"* according to the Certificate of survey thereof, taken and returned into the Land Office, bearing date the fifth day of January eighteen hundred and forty nine and there remaining—Together with all rights, profits, benefits and privileges thereto belonging—To Have and To Hold the same to him the said Archibald Chisholm, his heirs and assigns forever.

Given under the Great Seal of the State of Maryland, this twenty eight day of February Eighteen hundred and fifty four.

L. W. LIGON. [THE GREAT SEAL.]

2994 LAND OFFICE OF MARYLAND.

I certify that the within Patent is proper to be issued. In testimony whereof I hereto affix my name and the Seal of the Land Office of Maryland, this twenty eighth day of February eighteen hundred and fifty four.

[Land Office of Maryland.]

J. MURRAY,
Comm'r of the Land Office.

LAND OFFICE OF MARYLAND, *sct:*

I hereby certify that the aforegoing is a true copy of the Patent for "Eel Shine," 79½ acres—as recorded in Liber G. G. B. No. 8, folio 267 &c., one of the Record Books of this office.

In testimony whereof, I have hereunto set my hand
[SEAL.] and affixed the Seal of the Land Office of Maryland, this sixth day of October, eighteen hundred and ninety six.

WM. O. MITCHELL,
Commissioner of the Land Office.

(Endorsed:) Copy Patent "Eel Shine" 79½ acres. Cost $1.00.

2995 MONROE EXHIBIT No. 6.

Patrick Henry, Esquire, Governor of the Commonwealth of Virginia, to all to whom these presents shall come, Greeting:

Know Ye, That by virtue of part of a Preemption Treasury Warrant Number 1692, and issued the 20th day of October, 1781, there is granted by the said Commonwealth unto Zarah Osborne, assignee of John Petty John, a certain tract or parcel of land containing 660 acres by survey, bearing date the twentieth day of April, 1782, lying and being in the county of Monongalia, on the waters of Yohogania adjoining the lands of John Petty John and bounded as followeth, to wit: Beginning at pointers in the Maryland line corner to John Petty John and running with the Maryland line due S. 282 poles to a maple W. 30 poles to pointers N. 34 poles to a maple W. 140 poles to pointers, W. 56 poles to a white oak. S. 34 poles to a white oak N. 45 poles to pointers W. 34 poles to a forked fir tree. N. 40 poles to pointers W. 140 poles to pointers S. 120 poles to a maple pointers W. 80 poles to a service, N. 80 poles to a white oak W. 20 poles to pointers, N. 27° W. 80 poles to a maple N. 63° E. 40 poles to a Hickory N. 50° E. 170 poles to pointers in the line of said Osborne's Residence survey and W. said line S. 27½° E. 144 poles to a cherry tree N. 70° E. 220 poles to pointers corner to said Petty John and his line S. 45° E. 104 poles to a cherry tree N. 45° E. 104 poles to the beginning with its appurtenances.

To have and to hold the said Tract or Parcel of Land, with its appurtenances, to the said Zarah Osborne and his heirs forever.

In Witness Whereof, The said Patrick Henry, Esquire, Governor of the Commonwealth of Virginia, hath hereunto set his
[SEAL.] hand and caused the Lesser Seal of the said Commonwealth to be affixed at Richmond, on the 24 day of June in the year of our Lord one thousand seven hundred and 85 and of the Commonwealth the Ninth.

PATRICK HENRY.

(Endorsed:) Zarah Osborne. 660 a.

2996 MONROE EXHIBIT No. 7.

Jesse J. Ashby, His Patent, "Buck Dale," 194½ Acres.

The State of Maryland to all persons to whom these presents shall come, Greeting:

Know Ye, That Whereas Jesse J. Ashby of Allegany County, on the twenty second day of April eighteen hundred and forty eight,

obtained out of the Land Office a Special Warrant of Escheat to resurvey and affect Lots Nos. 319, and 320, of the Military lands, lying to the Westward of Fort Cumberland in the County aforesaid, and contiguous to each *to each* other, which had escheated to the State for want of the heirs of —— —— who died seized thereof, intestate, and without heirs, with liberty of correcting errors adding any contiguous vacancy, and of reducing the whole into one entire tract—

In Pursuance Whereof, it is certified that a resurvey was made of the aforesaid Lots, and a Certificate thereof returned, when the same were found to contain with ninety three acres of vacant land added the quantity of one hundred and ninety four and a half acres, and called "Buck Dale," And the said Jesse J. Ashby, having fully compounded for the said land according to Law,—

The State of Maryland doth therefore Grant unto him the said Jesse J. Ashby, the said lands resurveyed as aforesaid with the vacancy added, reduced into one entire tract and called "Buck Dale," lying in Allegany aforesaid.

Beginning for the outlines of the whole at the original beginning of Lot number three hundred and nineteen, it being the end of the third line of Lot No. three hundred and eighteen, and at the end of twelve hundred and thirty two perches on the fourth line of a tract of land called "Small Meadows," at a stone planted in the centre between a hickory sapling, a chestnut Oak and a Red Oak, and running thence with the fourth line of "Small Meadows," reversed, and binding on that land, and also with the first lines of Lot Nos. *numbers* three hundred and nineteen and three hundred and twenty, the Originals, North, seven degrees East, two hundred and fifty perches, to a stake; then with the second line of the last men-
2997 tioned Lot, North, eighty three — West, sixty five perches, then with the third line of said lot, South, seven degrees West, fifty two perches, to the fifth line of a tract of land called "Septile," and with the said line reversed, South, forty three degrees West, two hundred and two perches, to a White Oak Sapling standing on the Virginia line as shown by William Ashby, and with said line, South, sixty perches; then East, sixteen perches, to the end of the *of the* sixth line of Lot No. three hundred and eighteen, and with the lines of said Lot reversed, the remaining courses, still East, ninety six perches; North seven degrees East, thirteen perches; South eighty three degrees East, sixty five perches to the beginning—

Containing one hundred and ninety four and *and* a half acres of land, according to the Certificate of resurvey thereof taken and returned into the Land Office bearing date the eighteenth day of November, eighteen hundred and forty eight, and there remaining. Together with all rights, profits, benefits and privileges thereunto belonging, To Have and To Hold the same unto him the said Jesse J. Ashby, his heirs and assigns forever.

Given under the Great Seal of the State of Maryland, this twenty first day of March eighteen hundred and sixty seven

THO. [THE GREAT SEAL.] SWANN.

LAND OFFICE OF MARYLAND.

I certify that the aforegoing Patent is proper to be issued.

In testimony whereof I have hereunto set my hand and affixed the Seal of the Land Office of Maryland, this twenty first day of March, eighteen hundred and sixty seven.

[Land Office of Maryland.]

WILLIAM L. W. SEABROOK,
Commissioner of the Land Office.

2998 LAND OFFICE OF MARYLAND, *sct:*

I hereby certify that the aforegoing is a true copy of the Patent for "Buck Dale," 194½ acres, as recorded in Liber L. W. S., No. 2, folio 271 &c., one of the Record Books of this Office.

In testimony whereof, I have hereunto set my hand and
[SEAL.] affixed the Seal of the Land Office of Maryland, this eighth day of October, eighteen hundred and ninety six.

WM. O. MITCHELL,
Commissioner of the Land Office.

(Endorsed:) Copy Patent "Buck Dale." 194½ ac. Cost $1.40.

2999 MONROE EXHIBIT No. 8.

William Ashby, 300 Acres, Monongalia Ex'd.

Edmund Randolph, Esquire, Governor of the Commonwealth of Virginia, to all to whom these presents shall come, Greeting:

Know ye, That by virtue & in consideration of part of a preemption treasury Warrant *Mo.* 1843, issued the 10th day of November, 1781, there is granted by the said Commonwealth unto William Ashby assee of John Simpson, a certain tract or parcel of land, containing 300 acres by survey bearing date the 21st day of March, 1785, lying and being in the County of Monongalia on a Main Branch of Yohogania river adjoining the Maryland line & bounded as followeth, to wit: Beginning at a cherry tree on the W. side of the said branch & running thence N. 61° W. 109 poles S. 51° W. 112 poles S. 84° W. 54 poles S. 37° W. 160 poles S. 18° W. 83 poles S. 55° E. 45¾ poles N. 48° E. 45½ poles E. 77 poles N. 43¼° E. 300 poles crossing said branch several times to the beginning with its appurtenances.

To have and to hold the said Tract or Parcel of Land, with its appurtenances, to the said William Ashby and his heirs forever.

In witness whereof, the said Edm'd Randolph, Esquire Governor of the Commonwealth of Virginia, hath hereunto set
[SEAL.] his hand and caused the Lesser Seal of the said Commonwealth to be affixed, at Richmond, on the 2nd day of February in the year of our Lord one thousand seven hundred and 87 and of the Commonwealth the 11th.

E. RANDOLPH.

3000 STATE OF WEST VIRGINIA.

Auditor's Office, City of Charleston, To wit:

I, A. C. Scherr, Auditor of the State of West Virginia, do hereby certify that the foregoing is a true copy of a paper, purporting to be a grant from the State of Virginia to William Ashby dated the 2nd day of February, 1787, on file in said Auditor's office, among the certified copies of records received from the office of the Register of the Land Office, at Richmond, Virginia, and deposited in said Auditor's Office, under Acts of the Legislature of West Virginia, passed February 24th, 1893, and February 20th, 1897.

Given under my hand and official seal, at Charleston, W. Va., this 20th day of July, 1906.

[SEAL.] A. C. SCHERR, *Auditor.*

3001 MONROE EXHIBIT No. 9.

John Hoye, 500 Acres, Preston Co.

James McDowell, Esquire, Governor of the Commonwealth of Virginia, to all to whom these presents shall come, Greeting:

Know ye, That in conformity with a survey made on the 31st day of August, one thousand eight hundred and forty two, by virtue of Land Office Treasury Warrant No. 14873, there is granted by the said Commonwealth unto John Hoye a certain Tract or Parcel of Land, containing five hundred acres *lieing* and being in the county of Preston on the waters of Youhogany river and adjoining the lands of William Ashby's surver of 200 acres now Henry Lowers and William Ashby's survey of 300 acres now Conrad Nine adjoining the Maryland line and extending west to the lines of a survey of Frances & William Deakins and bounded as follows to wit: Beginning at a hickory two red oaks and an ash standing at the end of the first line of William Ashby's survey of 300 acres and running with the 2nd and 3rd lines thereof S. 51 W. 112 poles to a chestnut and two hickorys S. 84 W. 54 poles to 2 white oaks & 2 dogwoods then with the lines of Deakins survey N. 22½ W. 225 poles to a beech & 2 maples standing on the North side of a spring drain N. 45 poles to a large chestnut & pointers N. 83 E. 100 poles to a stake N. 88½ E. 124 poles to a chestnut stump and pointers the beginning of William Ashby's survey of 200 acres near Henry Lawers N. 88½ E. 12 poles to the Maryland line & with it S. 198 poles to a stake in a line of William Ashby's survey of 300 acres, and with it N. 51 W. 13 poles to the beginning with its appurtenances.

To have and to hold the said Tract or Parcel of land, with its appurtenances, to the said John Hoye and his heirs forever.

In witness whereof, The said James McDowell, Esquire, Governor of the Commonwealth of Virginia, hath hereunto set his hand and caused the Lesser Seal of the said Commonwealth to be affixed, at Richmond, on the 30th day of March in the year of our Lord one thousand eight hundred and 43 and of the Commonwealth the 67th.

[SEAL.] JAS. McDOWELL.

3002 STATE OF WEST VIRGINIA,
Auditor's Office, City of Charleston, W. Va., To wit:

I, A. C. Scherr, Auditor of the State of West Virginia, do hereby certify that the foregoing is a true copy of a paper, purporting to be a grant from the State of Virginia to John Hoye dated the 30th day of March, 1843, on file in said Auditor's office among the certified copies of records received from the office of the Register of the Land Office at Richmond, Virginia, and deposited in the said Auditor's Office, under Acts of the Legislature of West Virginia, passed February 24, 1893 and February 20th, 1897.

Given under my hand and official seal, at Charleston, W. Va., this 20th day of July, 1906.

[SEAL.] A. C. SCHERR, *Auditor.*

3003 MONROE EXHIBIT No. 10.

William Ashby, 200 Acres, Monongalia Ex'd.

Edmund Randolph, Esquire, Governor of the Commonwealth of Virginia, to all to whom these presents shall come, Greeting:

Know ye, That by virtue and in consideration of part of a preemption Warrant, No. 1843, issued on the 10th day of November 1781, there is granted by the said Commonwealth unto William Ashby assee of John Simpson a certain tract of parcel of land, containing 200 acres by survey bearing date the 21st day of March, 1785, lying and being in the County of Monongalia on the waters of Snowy Glade creek adjoining the Maryland line, including the said Ashby's sugar camp & bounded as followeth, to wit: Beginning at a Chestnut N. 29° W. 220 poles to a pine tree, thence N. 5° W. 72 poles to a beech, thence S. 73° W. 56 poles to a pine tree thence S. 100 poles to a red oak, thence S. 24° W. 60 poles to a chestnut thence S. 20° E. 140 poles to a hickory, thence N. 77° W. 155 poles to the beginning with its appurtenances.

To have and to hold the said Tract or Parcel of Land, with its appurtenances to the said William Ashby and his heirs forever.

In witness whereof, the said Edm'd Randolph, Esquire, Governor of the Commonwealth of Virginia, hath hereunto set his hand and caused the Lesser Seal of the said Commonwealth to be affixed, at Richmond, on the 2nd day of February, in the year of our Lord one thousand seven hundred and 87 and of the Commonwealth the 11th.

[SEAL.]

E. RANDOLPH.

3004 STATE OF WEST VIRGINIA,
Auditor's Office, City of Charleston, To wit:

I, A. C. Scherr, Auditor of the State of West Virginia, do hereby certify that the foregoing is a true copy of a paper, purporting to be a grant from the State of Virginia to William Ashby, dated the 2nd day of February, 1787, on file in said Auditor's office among the cer-

tified copies of records received from the office of the Register of the Land Office at Richmond, Virginia, and deposited in the said Auditor's Office, under Acts of the Legislature of West Virginia, passed February 24th, 1893, and February 20th 1897.

Given under my hand and official seal, at Charleston, W. Va., this 20th day of July, 1906.

[SEAL.] A. C. SCHERR, *Auditor.*

3005 MONROE EXHIBIT No. 11.

Book 32, Page 457.

Henry White *et al.*
to
Henry Fradlock.

Deed.

This Indenture, made this Twenty-eight day of April in the year of our Lord one thousand eight hundred and forty-nine, between Henry White & Sarah White, his wife, of the first part (of Va.) & Henry Fradlock of the second part, of the State of Maryland.

Witnesseth: That the said Henry White & wife for and in consideration of One Hundred & Eighty-four Dollars & 38 cents to them in hand paid, have granted, bargained, and sold, and by these presents do grant, bargain, sell, alien, enfeoff, release and confirm, unto the said Henry Fredlock, his heirs and assigns forever, all of a certain piece or parcel of land, it being a part of a certain tract of land sold by John Hoye to said White by Deed, bearing date on the 22d of February, 1847, the part sold is bounded as follows:

Beginning at the North-east corner of a tract conveyed from s'd Hoye to Hoye, White at pointers; thence N. 87° E. 155 poles to Stone heap and Pointers in the original line; with the same S. 1° W. 236 poles, crossing the run to a stone heap & Pointers; thence N. 81° W. 155 poles Pointers, corner to Wiles; N. 1° E. 198 poles to the beginning, containing 210¾ acres, To have and to hold the above described premises, with the appurtenances to the same belonging, or in any wise appertaining to the only proper use, benefit, and behoof of him, the said Henry Fradlock, his heirs and assigns forever, and the said Henry White and Sarah, his wife, for themselves and their heirs, do covenant to and with the said Henry Fradlock, his heirs and assigns, that at the time of sealing and delivering these presents, they are seized of a good, sure, perfect and indefeisible estate of inheritance in fee simple, in the above described premises, free from all claims, liens, or encumbrances, and that they have good
right and authority to convey the same in manner and form
3006 aforesaid, and that they will warrant secure, and forever defend the said premises to the said Henry Fradlock, his heirs and assigns, free from the claim or claims of all persons claiming like from and through said White or his heirs. In testimony

whereof, the said Henry White & Sarah, his wife, have hereunto signed their names and affixed their seals the day and year above written.

HENRY WHITE. [L. S.]
her
SARAH x WHITE. [L. S.]
mark.

PRESTON COUNTY, *ss:*

We, the subscribers, Justices of the Peace in and for said County, in the State of Virginia, do hereby certify that Henry White, a party to the above Deed, personally appeared before us in our said County, and acknowledged the same to be his act and Deed, and desired us to certify his said acknowledgment to the Clerk of the County Court of Preston County, in order that said Deed may be recorded, at the same time personally appeared before us, in our said County Sarah White, the wife of the said Henry White, parties to the above Deed, and being examined by us privately and apart from her said husband, and having the Deed aforesaid fully explained to her, acknowledged the same to be her act and Deed, that she had willingly signed, sealed and delivered the same, and that she wished not to retract it.

Given under our hands and seals this — day of —— 18-.

R. MORRIS. [L. S.]
JOHN ELSEY, *J. P.* [L. S.]

VIRGINIA:

Be it remembered that on the 19th day of May in the year 1849, this Deed was produced to me, Thomas I. Murdock, D. C., for John P. Byrne, Clerk of the Court of Preston, in his office duly certified and admitted to record.

THOMAS I. MURDOCK.

3007 WEST VIRGINIA, *ss:*

I, Henry Startzman, Recorder of the County of Preston, certify that the foregoing is an original Deed, formerly recorded in my office in Deed Book No. 8, page 195, which book having been destroyed by fire on application of Martha Fradlock, the said Deed authenticated as per certificate thereon endorsed is thereupon recorded anew.

Given under my hand this 9th day of March, 1871.

HENRY STARTZMAN, *Recorder.*

A Copy from the Record.
Attest:

GEO. A. WALLS, *Clerk.*

3008 MONROE EXHIBIT No. 12.

Eliza Holme *et al.*
to
James Brown.

Deed.

This Deed, made this 11th day of November, A. D. 1875, between Eliza Holme and John Johnston, trustee, both of the County of Mineral, and State of West Virginia, parties of the first part, and James Brown, of Preston County, in the same State, party of the second part.

Witnesseth: That the said parties of the first part, for and in consideration of the sum of One Thousand Six Hundred Dollars to be paid as hereinafter specified, do hereby grant unto the said party of the second part, his heirs and assigns forever, the following described tract of land, lying in Preston County, West Virginia, described and bounded as follows, to-wit: That tract of land known as the Joseph Thomas farm, and bounded as follows.

Beginning at a Cherry and Maple, beginning corner of the Thomas survey, & corner to the Vanmeter land, now Joseph De Berry's land; thence with a line thereof East 116 poles to a White Oak, corner thereof in a line of the Boordman land; thence along said line North about thirty two poles to a line of land recently sold by James Brown to John Fahey; thence along said line West Twenty (20) poles to a Hickory, corner thereof, and original corner to the Thomas land; thence following the Thomas lines, and lines of Fahey land North two hundred poles to a stone heap; East eighty (80) poles to a stake in the glade and in the Maryland line; thence leaving Fahey's land and running along the State line North sixty (60) poles to a stake in the Glade; South 74¼° West (243) Two hundred Forty-three poles to pointers; South 3½° East (237) Two hundred and Thirty-seven poles to pointers; South 40° East (49) Forty-nine poles to a cherry tree; North 20° East (40) poles to the beginning, containing three hundred and Fourteen acres of land more or less. The aforesaid tract of land being part of the survey formerly owned by Joseph Thomas, and part of the land conveyed to John
3009 M. Holme by C. J. P. Cresap, Com'r by Deed, dated July 13th, 1860 & recorded in Preston County Deed Book No. 15, page 402 & 403, and part of the land subsequently conveyed by said John M. Holme and Eliza, his wife, to John Johnson, trustee, by Deed dated Feb. 4th, 1871, & recorded in Deed Book of Preston, No. 33, page 436, and also part of the land conveyed by said Holme & wife and John Johnson to John Johnson as trustee, by Deed dated Aug. 27th, 1875, also of Record in said County of Preston in Deed Book No. 41, page 404, &c.

And the said Eliza Holme hereby covenants that she will warrant generally the property hereby conveyed, and the said John Johnson,

trustee, covenants that he will warrant specially the property hereby conveyed.

Of the aforesaid consideration of One Thousand Six Hundred, the sum of One Thousand Dollars has been paid, the receipt whereof is hereby acknowledged, and the Six Hundred Dollars balance of said purchase money to be paid as follows: Two Hundred Dollars, part thereof due and to be paid one year from this date; Two Hundred Dollars, part thereof due and to be paid two years from this date; and Two Hundred Dollars, balance thereof due and to be paid in three years from date as evidenced by three notes for said amounts with said dates, and a lien is hereby reserved on the land herein conveyed to secure the payment of the said $600, a balance unpaid purchase money, as referred to in this Deed & said notes. Said notes each to bear interest from date till paid.

Witness the following signature and seals.

ELIZA HOLME. [SEAL.]
JOHN JOHNSON, *Trustee.* [SEAL.]

STATE OF WEST VIRGINIA,
County of Mineral, To wit:

I, James I. Barrick, Clerk of the County Court of Mineral County, West Virginia, do hereby certify that Eliza Holme and John Johnson, Trustee for the said Eliza Holme, whose names are signed to the foregoing writing, bearing date on the 11th day of November, 1875, have this day acknowledged the same before me in my said
3010 County, and the said Eliza Holme being examined by me privily and apart from her husband, John M. Holme, and having the said writing fully explained to her, she, the said Eliza Holme acknowledged the said writing to be her act and declared that she had willing- executed the same, and does not wish to retract it.

Given under my hand this 12th day of November, 1875.

JAMES I. BARRICK,
Clerk of the County Court of
Mineral County, West Virginia.

WEST VIRGINIA, *ss:*

On the 21st day of February, 1877, this Deed was produced to me, J. Ami Martin, Clerk of the County Court of Preston, in my Office, duly certified and admitted to record.

Test:

J. AMI MARTIN, *Clerk.*

A Copy from the Record.
Attest:

GEO. A. WALLS, *Clerk.*

3011 MONROE EXHIBIT No. 13.

Book 62, Page 117.

Edward Long
to
Dennis Glover.

Deed.

This Deed, made this 16th day of October, 1882, between Edward Long and Catharine Long, his wife, Grantors, and Dennis Glover, Grantee, all of Preston County, W. Va.

Witnesseth: That for and in consideration of the sum of Fourteen Hundred Dollars, Five Hundred in hand paid, the receipt whereof is hereby acknowledged, the balance of Nine Hundred Dollars to be paid as follows: Three Hundred Dollars on the 16th day of October, 1883, with interest from date, Two Hundred Dollars on the 16th day of October, 1884, with interest from date; Two Hundred Dollars on the 16th day of October, 1885, with interest from date; Two Hundred Dollars on the 16th day of October, 1886, with interest from date, and the said Grantors do hereby retain a lien on the said land hereby conveyed to the said Grantee for the deferred payments of the purchase money of Nine Hundred Dollars above mentioned; the said Grantors do grant with General Warranty unto the said Grantee part of a certain tract of land, situated in Portland District, in the County of Preston, and State of West Virginia bounded as follows, viz.: First adjoining the Maryland line, situated in the County of Preston, and State of West Virginia, and the same which Samuel Thomas & wife conveyed to David Freeland & by said Freeland to Jas. Brown & by said Brown to the Grantors, by Deed, bearing date Dec. 12th, 1857, it being the same that was surveyed and laid off from the original survey of 500 acres called the Thomas survey, and this is bounded as follows, to-wit:

Beginning at a stake in the Maryland line and running thence from said line West 80 poles to a stone heap; thence South 200 poles to a Hickory; thence East 80 poles to a Maple Tree, in the Maryland line; thence with said line N. 200 poles to the beginning, containing One hundred acres of land, together with all and every of the appurtenances and privileges thereto belonging, or in anywise appertaining, and the said Grantors, covenants that they have good right to convey the said one hundred acres of land to the said Grantee in manner and form aforesaid.

3012 Witness the following signatures and seals.

his
EDWARD x LONG. [SEAL.]
mark.

her
CATHARINE x LONG. [SEAL.]
mark.

Witness:
PARLEY DE BERRY.

I, E. D. Benson, a Justice in and for the County of Preston, do certify that Edward Long, whose name is signed to the above Deed, bearing date on the 16th day of October, 1882, has this day acknowledged the same before me at my office in Cranberry.

Given under my hand this 16th day of October, 1882.

E. D. BENSON, *Justice.*

I, E. D. Benson, a Justice in and for the County of Preston, do certify that Catharine Long, wife of Edward Long, whose name is signed to the above, bearing date Oct. 16th, 1882, has this day acknowledged the same to be her signature, & after being by me examined separate and apart from her husband & having said writing fully explained to her, declared this to be her act and Deed & does not wish to retract the same.

Given under my hand at my office, in Cranberry, this 16th day of October, 1882.

E. D. BENSON, *Justice.*

WEST VIRGINIA, *ss:*

On the 13th day of April, 1888, the foregoing writing with certificate thereto was produced to me in my office, and therein admitted to record.

Test:

J. AMI MARTIN,
Clerk County Court Preston Co.

A Copy from the Record.
Attest:

GEO. A. WALLS, *Clerk.*

(Here follows plat.)

Oak 380
North 1520
South 1280
East 250
Maple & Cherry
N 67 W 180
Cherry
S 58 W. 343
Maple & Cherry
Cherry
Maple
West 188

3013 MONROE EXHIBIT No. 14.

Surveyor's Book No. 5, Page 46.

NOV'R 16TH, 1800.

Surveyed for Honore Martin and John *Hoiye* Ass'ee of John Stockdell, 3600 acres of land in Monongalia County *ib oart* of a Land Office Treasury Warrant of No. 18771 Is-ued the 16th day of Aug't 1783, to Jno. Stockdell entered the 12th day of Nov'r 1780 adjoining the Maryland line lands of William McCleery & Henry Banks near the pine swamp corner of William McCleery's settlement Su-vey of 400 acres and a corner to his Su-vey of 400 acres made by virtue of a preemp. Warrant and running with the latter reversed S. 25 E. 23 Ps. to a Cherry tree, S. 45 E. 83 ps. to a cherry S. 66 W. 136 ps. to two Maples and two white oaks N. 67 W. 100 pos. to a cherry corner to the aforesaid peremption Survey and likewise corner William McCleery's 500 acre tract and with the same revers'd S. 58 W. 343 ps. to a Maple & Cherry his corner and the beginning corner of Henry Bank's survey No. 42 and running with the same East 250 ps. to a maple corner to the same thence with a line of *sad* Bank's surveys No. 42-43 & 44 and with a line of a late survey of said Banks south 1280 ps. to intersect a line of a Survey of Fras. & Wm. Deakens & with it East 380 ps. to the Maryland line and with it North 1550 to Intersect McC-eery's line and with it West 188 ps. to the beginning.

JOHN HOYE,
Ass't to Sam'l Hanway S. M. C.

A true copy,
Attest: JOHN M. GREGG, *Clerk.*

3014 MONROE EXHIBIT No. 15.

Whereas, the Legislature of Virginia, passed an Act on the 30th day of March, in the year 1837, entitled an Act to amend and explain the laws concerning Western Land Titles and for other purposes; and

Whereas the Legislature of Virginia passed another act on the 15th day of March, 1838, entitled an act to amend an act to amend an act entitled an act to amend and explain the laws concerning Western Land Titles, and for other purposes; and

Whereas, William Sigler was appointed a Commissioner of delinquent and forfeited lands by the Circuit Superior Court of Preston County, in the State of Virginia, for the County of Preston aforesaid, and being duly qualified according to the above named acts requirements, and according to and in compliance with the orders and decrees of the Circuit Superior Court of Preston County, I proceeded to sell certain lands on the 14th day of August in the — 1843, and of the lands decreed to be sold, John Hoye was the purchaser of a part thereof for the sum of Ninety-Five Dollars, which he has fully paid to me.

Now this Indenture Witnesseth, that I, William Sigler, Commissioner for Delinquent and Forfeited Lands as above named, and in pursuance of the acts above named, and the orders and decrees of the Circuit Superior Court of Preston County, do by these pres-

ents convey unto the before named John Hoye, all of a certain tract or parcel of land, situated in Preston County, containing three thousand six hundred acres, and adjoining the Maryland, and the lands of William McCle-ry and Henry Banks, and sold as aforesaid as the lands of John Hoye and Honor Martin's heirs.

And I, the said William Sigler do hereby convey to the said John Hoye and his heirs forever, all the right, title, interest or claim whether in law or equity to and for the above named tract of land, whether derived from the acts above named, or from any other acts or laws having reference or bearing with the same, or from the orders or decrees of the Circuit Superior Court of Preston County
3015 as above named; so far and so full as I could do in complying with the laws and decrees and orders as above hereinbefore named, and in accordance with the sale as hereinbefore named.

To Have and to hold the said tract of land in conformity with the sale aforesaid, unto the said John Hoye and his heirs and assigns forever in as full and ample a manner as I can convey the same by virtue of the hereinbefore named Acts, orders or decrees, forfeitures or delinquencies.

In Testimony Whereof, I the said William Sigler, Commissioner of Delinquent and Forfeited Lands for the county of Preston, have hereunto signed my name and affixed my seal, the 14th day of January in the year 1845.

WILLIAM SIGLER. [SEAL.]

VIRGINIA:

Be it remembered that on the 18th January, 1845, this deed was produced to me, Smith Crane, Deputy for John P. Byrne, Clerk of the County Court of Preston County, in my office, duly acknowledged by the said William Sigler, and admitted to record.

SMITH CRANE.

WEST VIRGINIA, *ss:*

I, Henry Startzman, Recorder of the County of Preston, certify that the foregoing is an original deed formerly recorded in my office in book No. 7 page 68, which book having been destroyed by fire, on application of Elizabeth Fream, the said deed authenticated as per certificate thereon endorsed, is thereupon recorded anew.

Given under my hand this the 9th day of April, 1870.

HENRY STARTZMAN, *Recorder.*

A copy from the record,
Attest:

GEORGE A. WALLS,
Clerk, County Court Preston County, W. Va.

3016 MONROE EXHIBIT No. 16.

John Crane's Heirs
to
Joseph Feather.

Deed.

This Deed, made the 4th day of May in the year one Thousand Eight hundred and Sixty-four, between Nancy Crane, widow of

John Crane, deceased, Smith Crane, and Mary C., his wife, Samuel Crane and Abigail, his wife, Henry Albright, and Elizabeth, his wife, late Elizabeth Crane, Elisha Crane, and Mary Ann, his wife, John E. Otto, and Jane, his wife, late Jane Crane, Jacob W. Crane, and John B. Crane children and heirs at law of the said deceased, Grantors of the one part, and Joseph Feather, Grantee, of the other part.

Witnesseth: That in consideration of Eight Thousand, Eight hundred and Thirty-two Dollars, ($8,832.00) paid, and to be paid to Smith Crane, surviving Administrator of the said deceased, to-wit: Twenty-six Hundred and Twenty-four Dollars and 22 cents ($2,624.32) in cash: Forty-seven Hundred and 7 Dollars and 78 cents ($4,707.78/100) in assigned promissory notes and bonds, and the remaining Fifteen Hundred Dollars ($1500.00) to be paid within three years from the second day of April last, as per single bill executed by the Grantee on the day last aforesaid (the date of the other payments) to said Administrator, bearing interest from date, and which said deferred payment is hereby reserved as a lien upon the hereinafter described land until paid, the said Grantors do grant with General Warranty, unto the said Grantee all the following described tract or parcel of land, situate partly in the County of Preston, and State of West Virginia, and partly in the adjoining County of Allegheny, in the State of Maryland, and known as the "Home Farm" of the said decedent, and some adjoining parcels; estimated to contain six hundred & seventy-six & ½ acres, more or less, this being a sale in gross, (and not by the acre) and bounded as follows, to-wit:

Beginning at a stake in the first line of the tract of land called "The Diadem" fifty four poles from the beginning, corner of said tract, and also in the 11th line of the tract called "Recourse" patented to Samuel Selby 3d and James and Thomas Cook on the 12th May, 1796, by the State of Maryland, and known also as the
3017 "White" tract of land, and running thence with the said first line W. 60 E. 120 poles to a stone heap 2 red oaks, and a Chestnut Pointers, corner to Alpheus McNear; thence with said McNear's and John E. Otto's line N. 70 W. 165 poles to a small red Oak, said Otto's beginning corner; thence West (running up over the Nettle Ridge) 213 poles to David Wolf's line; thence with Wolf's line S. 5 W. 12 poles to a Red Oak and Chestnut Pointer, corner to Wolf and Jonathan Wilhelm; thence with four of Wilhelm's lines reversed, to-wit: S. 28 W. 32 poles to a Red Oak; thence S. 81 W. 60 poles to a stone and pointers; thence S. 17 W. 134 poles to a stake; thence N. 72 W. 47 poles to a Box Elder (or Mountain Ash) in Samuel Crane's line; thence with two of his lines, to-wit: S. 5 E. 16 poles to Pine and Cherry; thence S. 32° 12′ W. 105 poles to a stone, marked J. W. E. (formerly known as the Edwards corner) standing on the South side of the road leading from Cranesville to Henry Albrights, and in his line, thence with two of his lines reversed, (and the said road) S. 85 E. 48 poles No. 74 E. 45 poles to the rear line of lots (known on the plat of the village of Cranesville as lots Nos. 51 and 49 &c.; thence S. 36 E. (supposed to be the outline

of the West end of the town lots) 20 poles to a small Chestnut (recently cut down) and Chestnut pointers, corner to Philip Dennis; thence with his line reversed S. 30½ W. 103 poles to pointers in a line of the Harrison Sypolt survey; thence with a line of the same N. 53 W. 39 poles to a stone pile in said Albright line; thence with six of his lines, to-wit: N. 1 E. 24 poles to a stake at the fence on the north side of the Kingwood road; thence N. 53 E. 16 poles N. 70 E. 30 poles; N. 59 E. 32 poles, N. 37½ E. 22 poles; N. 36 W. 6 poles to the East end of said Feather's line (running N. 74 E. 45 poles); thence with the said rear line of lots 51 & 49 &c. N. 56 E. 138 poles to the N. W. corner of the Graveyard lot; thence S. 75 E. 14 poles; thence with the land N. 78 E. 36 poles and 9 links to a corner of the Tanyard lot (sold to Chas. F. Stone; thence with a line of the Tan-yard lot (the present fence) S. 56 E. 96 poles to a stake in the Edmond Kelly line (now said Dennis's); thence E.
3018 203 poles to a stake in the 9th line of the tract of land purchased by the Grantors from William Brooming; thence with the residue of the said 9th line reversed North 67 poles to a stake; thence in the 8th line of the Brooming tract reversed East 30 poles to a stake at the end of the 12th line of said tract called "Recourse;" thence with the said 12th line reversed (being the 7th line of the Brooming tract) N. 37 W. 40 poles to a stake; thence with a part of the 11th line of the said tract called "Recourse" (being the 6th line of the said Brooming tract) North 61 poles to the beginning. The aforesaid boundaries embrace about 22 acres of the Cunningham, or Charles Martin Survey, 129¼ acres of the tract called "Sigonia," purchased by the Grantees of Wm. Browning, and a portion of the John Summers Survey of 200 acres, in addition to the part known as the decedents "Homestead" as aforesaid. And the Grantors covenant to and with the said Grantee, his heirs and assigns, that at the time of the sealing and delivering hereof, they are seized of an estate, in fee simple in the premises hereby conveyed, that the same are free from all encumbrances, and that they have the right to convey the said land to the Grantee.

Witness the following signatures and seals.

Test as to Smith & Mary C. Crane:	NANCY CRANE.	[SEAL.]
J. E. HOOTON.	SMITH CRANE.	[SEAL.]
Test as to John B. Crane:	MARY C. CRANE.	[SEAL.]
E. W. S. MOORE.	JOHN B. CRANE.	[SEAL.]
Test as to Elisha & Mary Ann Crane:	ELISHA CRANE.	[SEAL.]
J. C. WEBSTER.	MARY ANN CRANE.	[SEAL.]
Test as to J. W. Crane:	J. W. CRANE.	[SEAL.]
A. M. ADAMS.	HENRY ALBRIGHT.	[SEAL.]
Test as to Henry Albright & Elizabeth Albright, John E. Otto & Jane Otto & Samuel and Abigail Crane:	ELIZABETH ALBRIGHT.	[SEAL.]
	JOHN E. OTTO.	[SEAL.]
	JANE OTTO.	[SEAL.]
SMITH CRANE.	SAMUEL CRANE.	[SEAL.]
Test as to Nancy Crane: JOHN E. OTTO.	ABIGAIL CRANE.	[SEAL.]

3019 STATE OF WEST VIRGINIA,
County of Preston, To wit:

I, Ashbel C. Leach, a Notary Public, in and for the County and State aforesaid, do certify that Smith Crane, whose name is signed to the writing above, bearing date on the 4th day of May, 1864, has this day acknowledged the same before me in my County aforesaid. I also further certify that Mary C. Crane, wife of Smith Crane, whose names are signed to the said writing, bearing date as aforesaid, this day personally appeared before me in my County aforesaid, and being first duly examined by me privily and apart from her said husband, and having the said writing fully explained to her, she, the said Mary C. Crane, acknowledged the said writing to be her act, and declared that she had willingly executed the same, and does not wish to retract it.

In testimony whereof I have hereunto subscribed my name, and affixed my Official Seal, this the 4th day of May, A. D. 1864.

[NOTARIAL SEAL.] A. C. LEACH,
Notary Public.

STATE OF WEST VIRGINIA,
County of Marion, ss:

I, Ellery R. Hall, a Notary Public in and for the county of Marion and State aforesaid, do certify that John B. Crane, whose name is signed to the writing above, bearing date on the 4th day of May, 1864, hath this day acknowledged the same before me in my County aforesaid.

Given under my hand and Official Seal at Fairmont, this 9th day of May, 1864.

[NOTARIAL SEAL.] ELLERY R. HALL,
Notary Public.

CITY OF WHEELING,
County of Ohio, To wit:

I, James Shriver, a Notary Public in and for the City and County aforesaid, in the State of West Virginia, do certify that Jacob W. Crane, whose name is signed to the writing above, bearing
3020 date on the 4th day of *of* May, 1864, has this day acknowledged the same before me in my City and County aforesaid

Given under my hand and Official Seal, at Wheeling, this the Sixth day of June, in the year 1864.

[NOTARIAL SEAL.] J. SHRIVER,
Notary Public.

STATE OF ILLINOIS,
County of Logan, To wit:

I, F. C. W. Koehnle, a Notary Public, in and for the County and State aforesaid, do certify that Elisha Crane, whose name is signed to the writing above, bearing date on the 4th day of May, 1864, has this day acknowledged the same before me in my County aforesaid: I also further certify that Mary Ann Crane, wife of the said Elisha

Crane, whose names are signed to the said writing, bearing date aforesaid, this day personally appeared before me in my County aforesaid, and being first duly examined by me privily and apart from her said husband, and having the writing aforesaid fully explained to her, she, the said Mary Ann Crane, acknowledged the said writing to be her act, and declared that she had willingly executed the same and does not wish to retract it.

Given under my hand and Official Seal, this 23rd day of May, 1864.

[NOTARIAL SEAL.] F. C. W. KOEHNLE,
Notary Public.

STATE OF WEST VIRGINIA,
County of Preston, ss:

I, Smith Crane, a Notary Public in and for said County, do hereby certify that on this 16th day of July, in the year eighteen Hundred and Sixty-four, Henry Albright and Elizabeth Albright, his wife, John E. Otto, and Jane Otto, his wife, and Samuel Crane and Abigail, his wife, whose names are signed to the writing hereto annexed, bearing date on the 4th day of May, 1864, personally appeared before me in my said County, and did each acknowledge the foregoing Deed to be their respective act. I also certify that at the same time and place, the said Elizabeth Albright, the wife
3021 of Henry Albright, Jane Otto the wife of said John E. Otto, and Abigail, the wife of the said Samuel Crane, having been first examined by me privily and apart from their said husbands, and having the writing aforesaid fully explained to them, they the said Elizabeth Albright, Jane Otto, and Abigail Crane acknowledged the said writing to be their act and declared they had willingly executed the same and do not wish to retract it.

In testimony whereof I have hereunto subscribed my name, and affixed my Official Seal, the day and year first aforesaid.

[NOTARIAL SEAL.] SMITH CRANE,
Notary Public for Preston County.

STATE OF MARLAND,
Allegany County, ss:

I hereby certify that on this the 28th day of December, in the year Eighteen Hundred and Sixty-four, before the subscriber a Justice of the Peace, in and for the County of Allegany, in the State of Maryland, personally appeared Nancy Crane, whose name is signed to the writing hereto annexed, bearing date on the 4th day of May, in the year Eighteen Hundred and Sixty-four, and acknowledged the aforegoing Deed to be her act.

Given under my hand this — day of December, 1864.

D. HARRISON FRIEND, *Justice.*

WEST VIRGINIA, *ss:*

On this 31st day of December, 1864, this Deed was produced to me Henry Startzman, Recorder of the County of Preston, in my office

duly certified and admitted to record. And I further certify that said Deed had thereupon one adhesive stamp duly cancelled, of $10.00 Ten Dollars for denoting the duties imposed thereon by the Excise Law.

Test:

HENRY STARTZMAN, *Recorder.*

WEST VIRGINIA,
Preston County:

I certify that the foregoing is an original Deed, formerly recorded in my office in Deed Book No. 19, pages 5, 6, &c., and that the record thereof was burned on the 7th of March, 1869, whereupon
3022 the same is recorded anew.

Given under my hand this 17th day of May, 1880.

J. AMI MARTIN,
Clerk Co. Court of said County.

A Copy from the Record.
Attest:

GEO. A. WALLS, *Clerk.*

3023 MONROE EXHIBIT No. 17.

Stephen West, 500 Acres, Monongalia Ex'd.

Patrick Henry, Esquire, Governor of the Commonwealth of Virginia, to all to whom these presents shall come, Greeting:

Know ye, That by virtue and in consideration of part of a preemption treasury Warrant, No. 21319, issued the 16th day of October 1782, there is granted by the said Commonwealth unto Stephen West assignee of William McCeery who was assignee of John Bradberry, a certain tract or parcel of land containing five hundred acres by survey bearing date the 19th day of November 1785, lying and being in the County of Monongalia adjoining his settlement at the pine swamp & bounded as followeth, to-wit: Beginning at 3 sugar trees corner to his settlement survey & running thence S. 33° W. 50 poles to two sugar trees & two hickories S. 8° W. 89 poles to a Spanish oak & white oak S. 61½° W. 222 poles crossing 2 runs to a white oak S. 17° E. 249 poles to a maple N. 58° E. 343 poles crossing a run to a cherry tree corner to his settlement & with the same N. 24° W. 315 poles to the beginning with its appurtenances.

To have and to hold the said Tract or Parcel of Land, with its appurtenances, to the said Stephen West and his heirs forever.

In witness whereof, The said Patrick Henry, Esquire, Governor of the Commonwealth of Virginia, hath hereunto set his hand and caused the Lesser Seal of the said Commonwealth to be affixed, at Richmond, on the 2nd day of October in the year of our
[SEAL.] Lord one thousand seven hundred and 86 and of the Commonwealth the 11th.

P. HENRY.

3024 STATE OF WEST VIRGINIA,
Auditor's Office, City of Charleston, To wit:

I, A. C. Scherr, Auditor of the State of West Virginia, do hereby certify that the foregoing is a true copy of a paper, purporting to be a grant from the State of Virginia to Stephen West, dated the 2nd day of October, 1786, on file in said Auditor's office among the certified copies of records received from the office of the Register of the Land office at Richmond, Virginia, and deposited in the said Auditor's Office, under Acts of the Legislature of West Virginia, passed February 24, 1893, and February 20th, 1897.

Given under my hand and official seal, at Charleston, W. Va., this the 20th day of July, 1906.

[SEAL.] A. C. SCHERR, *Auditor.*

3025 MONROE EXHIBIT No. 18.

Stephen West, 400 Acres, Monongalia Ex'd.

Patrick Henry, Esquire, Governor of the Commonwealth of Virginia, to all to whom these presents shall come, Greeting:

Know ye, That by virtue of a certificate in right of settlement given by the commissioners for adjusting titles to unpatented lands in the district of Monongalia Yohogania & Ohio & in consideration of the ancient composition of two pounds Sterling paid by Stephen West into the treasury of this Commonwealth, there is granted by the said Commonwealth unto the said Stephen West assignee of William McCleery who was assignee of James Holselan a certain tract or parcel of land containing 400 acres by survey bearing date the 19th day of November 1785, lying and being in the County of Monongalia, including his improvement made at the pine swamp in the year 1770 & bounded as followeth to wit: Beginning at 3 white oaks, & running with his preemption land N. 31° W. 348 poles to a sugar tree in a line of his settlement survey as assignee of William Hardin & with the same S. 49° W. 268 poles to a cherry tree corner to his settlement as assignee of Bradberry & with the same S. 25° E. 120 poles to a maple, thence S. 88° E. 324 poles crossing a run to the beginning with its appurtenances.

To have and to hold the said Tract or Parcel of Land, with its appurtenances, to the said Stephen West and his heirs forever.

In witness whereof, The said Patrick Henry, Esquire, Governor of the Commonwealth of Virginia, hath hereunto set his hand and caused the Lesser Seal of the said Commonwealth to be affixed at Richmond, on the 2nd day of October in the year of our Lord one thousand seven hundred and 86 and of the Commonwealth the 11th.

[SEAL.] P. HENRY.

3026 STATE OF WEST VIRGINIA,
Auditor's Office, City of Charleston, W. Va., To wit:

I, A. C. Scherr, Auditor of the State of West Virginia, do hereby certify that the foregoing is a true copy of a paper purporting to be

a grant from the State of Virginia, to Stephen West, dated the 2nd day of October, 1786, on file in said Auditor's office among the certified copies of records received from the office of the Register of the Land office at Richmond, Virginia, and deposited in the said Auditor's Office, under Acts of the Legislature of West Virginia, passed February 24th, 1893 and February 20th, 1897.

Given under my hand and official seal, at Charleston, W. Va., this 20th day of July, 1906.

[SEAL.] A. C. SCHERR, *Auditor.*

3027 MONROE EXHIBIT No. 19.

Stephen West, 400 Acres, Monongalia Ex'd.

Patrick Henry, Esquire, Governor of the Commonwealth of Virginia, to all to whom these presents shall come, Greeting:

Know ye, That by virtue of a certificate in right of settlement given by the Commissioners for adjusting the titles to unpatented lands in the District of Monongalia, Yohogania & Ohio & in consideration of the ancient composition of two pounds sterling paid by Stephen West into the treasury of this Commonwealth, there is granted by the said Commonwealth unto the said Stephen West assignee of William McCleery who was assignee of John Bradberry a certain tract or parcel of land, containing 400 acres by survey bearing date the 20th day of November, 1785, lying and being in the County of Monongalia including his settlement made in the year 1776 & bounded as followeth, to wit: Beginning at a sugar tree corner to his settlement as assignee of William Harden running thence S. 49° W. 114 poles to a sugar tree corner to his preemption as assignee of said Bradberry & with the same S. 24° E. 315 poles to a cherry tree, thence S. 67° E. 100 poles to two maples & two white oaks N. 66° E. 136 poles to a cherry tree N. 45° W. 83 poles to a cherry tree, N. 25° W. 23 poles to a maple corner to his settlement assignee of James Holesclan course continued by the same 143 poles to a cherry tree, corner to his settlement as assignee of William Harden and by the same N. 41½° W. 214 poles to the beginning with its appurtenances.

To have and to hold the said Tract or Parcel of Land, with its appurtenances, to the said Stephen West and his heirs forever.

In witness whereof, the said Patrick Henry, Esquire, Governor of the Commonwealth of Virginia, hath hereunto set his hand and caused the Lesser Seal of the said Commonwealth to be hereto affixed, at Richmond, on the 2nd day of October in the year [SEAL.] of our Lord one thousand seven hundred and 86 and of the Commonwealth the 11th.

P. HENRY.

3028 STATE OF WEST VIRGINIA,
Auditor's Office, City of Charleston, To wit:

I, A. C. Scherr, Auditor of the State of West Virginia, do hereby certify that the foregoing is a true copy of a paper, purporting to

be a grant from the State of Virginia to Stephen West, dated the 2nd day of October, 1786, on file in said Auditor's office among the certified copies of records received from the office of the Register of the Land Office at Richmond, Virginia, and deposited in the said Auditor's Office, under Acts of the Legislature of West Virginia, passed February 24th, 1893, and February 20th, 1897.

Given under my hand and official seal, at Charleston, W. Va., this 20th day of July, 1906.

[SEAL.] A. C. SCHERR, *Auditor.*

3029 MONROE EXHIBIT NO. 20.

Whereas, the Legislature of Virginia passed an Act on the 30th day of March, in the year 1837, entitled an act to amend and explain the laws covering Western Land Titles, and for other purposes; and

Whereas, the Legislature of Virginia passed another act on the 15th day of March, 1838, entitled an Act to amend an Act entitled an Act to amend and explain the laws concerning Western Land Titles and for other purposes, and Whereas William Sigler was appointed Commissioner of Delinquent and Forfeited Lands by the Circuit Superior Court of Preston County in the State of Virginia for the County of Preston aforesaid, and being duly qualified according to the requirements of the above named Acts, and according to and in compliance with the orders and decrees of the Circuit Superior Court of Preston County, I proceeded to sell certain lands on the 9th day of March in the year 1840, and of the lands decreed to be sold John Crane was the purchaser of a part thereof for the sum of Five Dollars, which he has paid in full to me.

Now This Indenture Witnesseth, That I, William Sigler, Commissioner of Delinquent and Forfeited Lands as above named, and in pursuance of the Acts above named, and the orders and decrees of the Circuit Superior Court of Preston County, do, by these presents convey unto the before named John Crane all those several tracts or parcels of land situate in the Pine Swamp along and near the Maryland Line in Preston County aforesaid, being the same land surveyed for William McClery, and by him assigned to Stephen West, containing twenty seven hundred acres of land and sold as aforesaid as the land of Stephen West's heirs, excepting however as excepted by the above named acts.

And I, the said William Sigler, do hereby convey to the said John Crane and his heirs forever, all the right, title, interest or claim,
3030 whether in law or equity to and for the above named lands; whether derived from the acts above named or from any other acts or laws having reference or bearing with the same, or from the orders or decrees of the Circuit Superior Court of Preston County as above named, so far and so full as I could do in complying with the laws and decrees and orders above herein before named, and in accordance with the sale as herein before named.

To have and to hold the said lands in conformity with the sale aforesaid unto the said John Crane and his heirs and assigns forever, in as full and ample a manner as I can convey the same by virtue of

the hereinbefore named acts, orders, decrees, Forfeitures or Delinquencies.

In Testimony Whereof, I, the said William Sigler Commissioner of Delinquent and Forfeited Lands for the County of Preston, have hereunto signed my name and affixed my seal the 8th day of June in the year 1840.

WILLIAM SIGLER. [SEAL.]

VIRGINIA:

Be it remembered that on the 8th day of June 1840, this deed was produced to me John P. Byrne, Deputy for Chas. Byrne, Clerk of the County Court of Preston County, in my office, and acknowledged by the within named William Sigler, which is admitted to record.

JOHN P. BYRNE.

STATE OF WEST VIRGINIA,
County of Preston, To wit:

I, Geo. A. Walls, Clerk of the County Court of said County, do hereby certify that the foregoing writing was this day produced to me in my said office, and together with the certificate thereunto annexed, was duly admitted to record therein, anew.

Given under my hand, this 21st day of July, 1906.

GEO. A. WALLS, *Clerk.*

A copy from the record,
Attest:

GEO. A. WALLS, *Clerk.*

July 23, 1906.

3031 MONROE EXHIBIT No. 21.

Stephen West, 1,000 Acres, Monongalia Ex'd.

Patrick Henry, Esquire, Governor of the Commonwealth of Virginia, to all to whom these presents shall come, Greeting:

Know ye, That by virtue & in consideration of preemption treasury Warrant No. 2320, issued the 16th day of October 1782 there is granted by the said Commonwealth unto Stephen West assignee of William McCleery who was assignee of James Holselan, a certain tract or parcel of land, containing 1000 acres by survey bearing date the 20th day of November 1785, lying and being in the County of Monongalia adjoining his settlement at the pine swamp & bounded as followeth, to wit: Beginning at 3 sugar trees corner to his settlement survey & running thence N. 62° E. 114 poles to a hickory & white oak N. 35° E. 245 poles to 3 white oaks N. 8° W. 118 poles to 2 maples N. 49° W. 159 poles crossing a creek to two maples & a white oak N. 79° W. 330 poles to two maples & white oak N. 54½° W. 95 poles to a hickory corner to his settlement as assignee of William Hardin & with the same S. 41½° E. 214 poles crossing 2 forks of said creek to a cherry tree S. 49° W. 30 poles to a sugar

tree corner to his settlement as assignee of James Holsclan & with the same S. 31° E. 348 poles to the beginning with its appurtenances.

To have and to hold the said Tract or Parcel of Land, with its appurtenances, to the said Stephen West and his heirs forever.

In witness whereof, the said Patrick Henry, Esquire, Governor of the Commonwealth of Virginia, hath hereunto set his [SEAL.] hand and caused the Lesser Seal of the said Commonwealth to be affixed, at Richmond, on the 2nd day of October in the year of our Lord one thousand seven hundred and 86, and of the Commonwealth the 11th.

P. HENRY.

3032 STATE OF WEST VIRGINIA,
Auditor's Office, City of Charleston, To wit:

I, A. C. Scherr, Auditor of the State of West Virginia, do hereby certify that the foregoing is a true copy of a paper, purporting to be a grant from the State of Virginia to Stephen West, dated the 2nd day of October, 1786, on file in said Auditor's office among the certified copies of records received from the office of the Register of the Land office at Richmond, Virginia, and deposited in the said Auditor's Office, under Acts of the Legislature of West Virginia, passed February 24th, 1893, and February 20th, 1897.

Given under my hand and official seal, at Charleston, W. Va., this 20th day of July, 1906.

[SEAL.] A. C. SCHERR, *Auditor.*

3033 MONROE EXHIBIT No. 22.

This Indenture made this thirteenth day of August one Thousand Eight hundred and Thirty-two between Abraham Jeffers William Elliott and Sarah his wife of Preston County and State of Virginia of the one part and John Crane of Preston County and State aforesaid of the other part Witnesseth that the Said Abraham Jeffers William Elliott and Sarah his wife, for and in consideration of the Sum of Three Hundred Dollars to them in hand paid the Receipt whereof is hereby acknowledged hath granted bargained Sold Aleened and Confirmed and do by These presents grant bargain Sell aleen and Confirm unto the Said John Crane a certain undivided tract of land or three fourths of a certain tract which is held by us and Henry Sines laying on the waters of pine Swamp Muddy Creek and Bounded as followeth, to witt

Beginning at two white oakes at the North East Side of the pine Swam- and South of John Lewises barn Thence N. 14 W. 214 poles to a chestnut and Maple Thence S. 80 W. 270 poles to a white oake passing by the big Spring on the Rite Thence S. 21 poles to a shugar tree Corner to William Gables 500 acre Survey Thence with two lines of the Same S. 13 W. 144 poles to a Shugar tree thence South 60 W. 180 poles to a Stone Thence S. 85 E. 187 poles to pointers Thence N. 10 W. 20 poles to pointers and Thence N. 76 E. 340 poles Through the North end of the pine Swamp to the beginning Containing 520 acres by Survey be the same more or less to have

and to hold the afore Said tract of land *on* boundaries unto the aforesaid John Crane his heirs and assigns for Ever and the Said Abraham William and Sarah for Themselves There heirs Shall warrant and for Ever Defend from all persons Claiming Through by or under Them in Witness where of the aforesaid *S*ersons have here unto affixed Their hands and Seals The Day and year -bove written.

Copy:

ABRAHAM JEFFERS. [SEAL.]
WILLIAM ELLIOTT. [SEAL.]
her
SARAH ELLIOTT. [SEAL.]
mark

3034 PRESTON COUNTY, *To wit:*

We, Nathan'l Ashby and John Elliott Justices of the peace in the County aforesaid in the State of Virginia do hereby Certify that Sarah Elliott wife of William Elliott parties to a Certain Deed bearing Date on the Thirteenth day of August 1832 and here unto annexed personally appeared before us in our County aforesaid and being Examined by us prively and apart from her Husband and having the Deed aforesaid fully Explained to her She the — Sarah Elliott acknowledge- the Same to be her act and Deed and Declar*ing* that She had willingly Signed Sealed and Del-vered the Same and that She wished not to retract it given under our hands and Seals this 3rd day of September 1832.

Copy:

NATHAN ASHBY. [SEAL.]
JOHN ELLIOTT. [SEAL.]

VIRGINIA,
Preston County, To wit:

Be it remembered that on the 13th of August 1832 This deed was produced before me in my office and acknowledged by the within named Abraham Jeffers and William Elliott and on the 3rd day of September 1832 the acknowledgement of Sarah Elliott the wife of the said William Elliott duly certified by two Justices of the peace as the law directs, which is ordered to be recorded.

Given under my hand this 3d of September 1832.

Copy:

CHARLES BYRNE, *Cl'k.*

Abraham Jeffers & William Elliott to John Crane Deed Recorded in Book No. 3 page 167 Charles Byrne Cl'k.

3035 STATE OF WEST VIRGINIA,
County of Preston, To wit:

The foregoing is a correct copy of a Deed from Abraham Jeffers & William Elliott to John Crane, filed before me with the depositions of Julius K. Monroe, in the case of State of Maryland *vs.* State of West Virginia, Marked Monroe Exhibit No. 22.

[SEAL.] ROBERT W. MONROE,
Notary Public of Preston County, West Virginia.

3036 Copy.

MONROE EXHIBIT No. 23.

This indenture, Made this 31s- day of August in the year 1839 Between John Summers Jnr. of Fiatte County and State of Pennsylvania and Sarah his wife of the one part—And John Crane of Preston County and State of Virginia of the other part—

Witnesseth, That the said John Summers Jnr. and Sarah his wife for and in consideration of the Sum of One Hundred Dollars to them in hand paid by the sd. John Crane before the Sealing and delivere of these presant hath granted, bargained and sold, and by these presents doth grant, bargain, sell, alien, enfeoff, release, and confirm unto the said John Crane his heirs and assigns forever.

All the following Tract or Parcel of Land Situate lying and being in Preston County and State of Virginia, on the North side of the big pine swamp, adjoining a survey of Elliott Ec. of 520 acres on the South Charles Martins Survey and bounded as followeth

Beginning at at Shugar tree Corner to Charles Martins Survey thence with his line West 320 poles to a White oak his corner and in the line of William Gables Survey of 500 acres—Thence with the line of the Same reversed—North 60° East 78 poles to the line of the Survey made for Elliott Ec.—Thence with three lines of the same—South 85° East 187 poles to pointers—Thence North 10° West 20 poles to pointers—Thence North 76° East 200 poles to a Stake in the Swamp—Thence leaving Sd. survey South 200 poles to a Stake—Thence West 120 poles to Martins Survey—Thence with the line of the Same North 100 poles to the beginning,—Containing two hundred acres by Survey be the Same more or less.

To have and to hold The above described premises, with the appurtenances to the same belonging, or in any wise appertaining, to the only proper use, benefit and behoof of him the said John Crane his heirs and assigns forever.

3037 And the said John Summers Jnr. and Sarah his wife for themselves and their heir, doth covenant to and with the said John Crane his heirs and assigns, that at the time of sealing and delivering these presents they were seized of a good, sure, perfect and indefeasible estate of inheritance in fee simple, in the above described premises, and that they had good right and authority to convey the same in manner and form aforesaid, and that they will warrant, secure and forever defend the said premises to the said John Crane and his heirs and assigns, free from the claim or claims of them the said John Summers Jnr. and Sarah his wife, And their heirs and from all persons in threw or under them, And not from any clame or clames whatsoever.

In Testimony Whereof, The said John Summers Jnr. and Sarah his wife hath hereunto signed their names and affixed their seals the day and year above written.

JOHN SUMMERS, J'N'R. [ss.]
SARAH SUMMERS. [ss.]

PRESTON COUNTY, *To wit:*

We, Benj'n Shaw and William Conner Justices of the Peace in and for said County, in the State of Virginia, do hereby certify that Sarah Summers the wife of the John Summers Jnr. parteys to the within deed, personally appeared before us, in our county aforesaid, and being examined by us privately and apart from hir husband and having the deed fully explained to hir she acknowledged the same to be hir act and deed, and declared that She had willingly signed, sealed and delivered the same, and that She wished not to retract it.

And we do further certify that John Summers Jnr. a party to the within and at the same time and place personally appeared before us, and acknowledged the Same to be his act and deed and desired us to certify the Sd. acknowledgement to the Clerk of the
3038 County Court of Sd. County in order that the Sd. deed may be recorded.

Given under our hands and seals this 31st. day of August, 1839.

BENJ'N SHAW. [ss.]
WM. CONNER. [ss.]

VIRGINIA:

Be it remembered that on the 4" August 1845, this deed was produced to me Smith Crane deputy for John P. Byrne Clerk of the County Court of Preston, in my office duly certified and admitted to record.

SMITH CRANE.

John Summers to John Crane. Deed. Recorded, Book 7, Page 133. J. P. Byrne, Cl'k. Rec'd 4" August 1845.

STATE OF WEST VIRGINIA,
County of Preston, To wit:

The foregoing is a correct copy of a Deed from John Summers to John Crane, filed before me with the depositions of Julius K. Monroe, in the case of State of Maryland *vs.* State of West Virginia, Marked "Monroe Exhibit No. 23."

[SEAL.] ROBERT W. MONROE,
Notary Public of Preston County, West Virginia.

(Here follows map marked Monroe Exhibit No. 24.)

[Endorsed on map.]

MONROE EXHIBIT #24.

3039 MONROE EXHIBIT No. 26.

John Page, Harvey Banks, 8000 Acres, Monongalia Ex'd & Delivered Proprietor 28th June, 1803. Del'd Mr. Morgan Gary Jan. 19th, 1836.

John Page, Esquire, Governor of the Commonwealth of Virginia, to all to whom these presents shall come, Greeting:

Know ye that by virtue of 16 land office Treasury warrants of 500 acres each number- 16966 16953 16959, 16943, 16997, 16926, 16968, 17003, 16994, 16993, 16938, 16941, 16991, 16962, 16942, 16976, All issued the 12th of June 1783. There is granted by the said Commonwealth unto Henry Banks a certain tract or parcel of land containing 8000 acres by survey bearing date the 24th day of October 1799 lying and being in the County of Monongalia, adjoining the land of Anthony Worley. The new road that leads to John Triner the Maryland line and the lands of William McCleery at the pine swamp and bounded as followeth, To wit. Beginning at a white oak in Anthony Woods line near the new road and running S. 35° E. 249 poles crossing said Worley's mile run to a white oak S. 25° W. 886 poles crossing several branc-es to a chestnut oak E. 72 poles along the side of Beaver Creek hills to a white oak S. 12° W. 69 poles corssoing Beaver Creek to a large red oak S. 25° E. 180 poles to a red oak Line Cross's line S. 16° W. 364 poles corssing several branches of Muddy Creek to a pine S. 51° E. 40 poles of a branch to a pine S. 16° W. 128 to three chestnuts on the top of Muddy Creek hills S. 47 E. 164 poles along side of hill to white oak S. 112 poles to a sugar tree in Robert Foreman's line N. of the pine swamp knoll then with or near Colonel McCleery lines 784 poles corssing Pine Swamp run and some other drains to 5 white oaks in the Maryland line and with its N. 1780 to a double chestnut by the new road then W. 80 poles to three white oaks N. 50° W. 76 poles to a chestnut or near Samuel Hendricks line W. 280 to a red oak, S. 50° W. 120 poles to two white oaks W. 104 poles to a chestnut N. 60° W. 64 poles to a white — in or near John Archer's line then W. 116 poles to the beginning with its appurtenances.

To have and to hold the said Tract or Parcel of Land, with its appurtenances, to the said Henry Banks, and his heirs forever.

In Witness Whereof, the said John Page, Esquire, Governor of the Commonwealth of Virginia, hath hereunto set his hand
3040 and caused the Lesser Seal of the said Commonwealth to be affixed, at Richmond, on the 27th day of July in the year of our Lord one thousand eight hundred and five and of the Commonwealth the 28th.

[SEAL.] JOHN PAGE.

3041 STATE OF WEST VIRGINIA,
Auditor's Office, City of Charleston, To wit:

I, A. C. Scherr, Auditor of the State of West Virginia, do hereby certify that the foregoing is a true copy of a paper, purporting to be

a grant from the State of Virginia to Harvey Banks dated the 27th day of July, 1805, on file in said Auditor's office among the certified copies of records received from the office of the Register of the Land office at Richmond, Virginia, and deposited in the said Auditor's Office, under Acts of the Legislature of West Virginia, passed February 24th, 1893, and February 20th, 1897.

Given under my hand and official seal, at Charleston, W. Va., this 20th day of July, 1906.

[SEAL.]

A. C. SCHERR, *Auditor.*

3042 MONROE EXHIBIT No. 27.

Frances and William Deakins, 500 Acres, Monongalia Ex'd.

James Wood, Esquire, Lieut. Governor of the Commonwealth of Virginia, to all whom these presents shall come, Greeting:

Know ye, That by virtue and in consideration of a part of a land office Treasury Warrant No. 15577 issued the 3rd day of May, 1783 there is granted by said Commonwealth unto Frances & William Deakins assignee of William Deakins a certain tract or parcel of land containing 500 acres by survey bearing date 1st day of December 1789 lying and being in the County of Monongalia between * * * pine swamps of Muddy Creek and the head of Buffalo Run West of Yohogania River and bounded as followeth, to wit: Beginning at the end of 13 poles on 14th on the line of a tract of land Elder Springs originally granted and patented by the State of Maryland unto aforesaid Frances Deakins and running thence South 51° East 43 poles North 77° East 80 poles, North 41° East 40 poles North 70° West 76 poles to a bounded white oak and black gum, they being the beginning trees of aforesaid tract of land called Elder Spring thence North 6° E-st 64 poles East 90 poles South 424 poles West 295 poles thence by a straight line to the beginning with its appurtenances.

To have and to hold the said Tract or Parcel of Land, with its appurtenances, to the said Frances & William Deakins and their heirs forever.

In witness whereof, The said James Wood, Esquire, Lieut. Governor of the Commonwealth of Virginia, hath hereunto [SEAL.] set his hand and caused the Lesser Seal of the said Commonwealth to be affixed, at Richmond, on the 9th day of October in the year of our Lord one thousand seven hundred and 90 and of the Commonwealth the 15th.

JAMES WOOD.

3043 STATE OF WEST VIRGINIA,
Auditor's Office, City of Charleston, To wit:

I, A. C. Scherr, Auditor of the State of West Virginia, do hereby certify that the foregoing is a true copy of a paper, purporting to be a grant from the State of Virginia to Frances & William Deakins, dated the 9th day of October, 1790, on file in said Auditor's office

among the certified copies of records received from the office of the Register of the Land office at Richmond, Virginia, and deposited in the said Auditor's Office, under Acts of the Legislature of West Virginia, passed February 24th, 1893, and February 20th, 1897.

Given under my hand and official seal, at Charleston, W. Va., this 20th day of July, 1906.

[SEAL.] A. C. SCHERR, *Auditor.*

5044 MONROE EXHIBIT No. 28.

Littlejohn W. Tazewell, Esquire, Governor of the Commonwealth of Virginia, to all to whom these presents shall come, Greeting:

Know ye, That in conformity with a Survey made on the twenty fifth day of January, 1833, by Virtue of a Land Office Exchange Treasury Warrant, No. 2616, issued December 14, 1831, there is granted by the said Commonwealth unto Henry Deal a certain Tract or Parcel of Land, containing Three hundred and sixty seven acres, situate in Preston County, on the head waters of Little Sandy Creek including an improvement made by said Deal and adjoining lands of David Kelly, James Ervin and Jesse Spurgeons Knox place and bounded as followeth, To wit:

Beginning at a stone pile corner to David Kelly and running thence with his line and James Ervin's E. 100 poles to a stone pile corner to said Ervin thence S. 7° W. 80 poles to a stake, thence East 124 poles to a chesnut and white Oak thence N. 143 poles to a White Oak thence N. 75° W. 108 poles to a black Oak N. 27° E. 32 poles to a spanish Oak and chesnut Oak corner of Jesse Spurgeons Knox survey, thence with his line N. 50 W. 160 poles to a chesnut thence S. 60 W. 140 poles to a white Oak. Thence S. 140 poles to a chesnut Thence S. 85 W. (E.) 120 poles to the beginning.

To have and to hold said Tract or Parcel of Land, with its appurtenances, to the said Henry Deal, and his heirs forever.

In Witness Whereof, The said Littleton W. Tazewell, Esquire, Governor of the Commonwealth of Virginia, hath hereunto set his hand and caused the Lesser Seal of the said Commonwealth to be affixed at Richmond, on the thirtieth day of May in the year of our Lord one thousand eight hundred and thirty four and of the Commonwealth the 58th.

[SEAL.]

LITT'N W. TAZEWELL.

[Endorsed:] Henry Deal. 367 Preston Recorded Book 83 Page 98 Zalmon Cuppett.

[Endorsed:] Henry Deal hath title to the within granted land. W. Selden, R. L. off.

3045 MONROE EXHIBIT No. 29.

David Campbell, Esquire, Governor of the Commonwealth of Virginia, to all to whom these presents shall come, Greeting:

Know ye, That in conformity with a survey made on the 22nd day of April, one thousand eight hundred and thirty-four, by virtue of Land Office Treasury Warrant No. 11,185, there is granted by the said Commonwealth unto Henry Deal, a certain tract or parcel of land containing three hundred and twenty-eight acres situate in Preston County on the waters of Buffalo Creek adjoining his own land, James Ewin and others and bounded as follows:

Beginning at a white oak corner to Deal's formar survey at the end of the fourth line and running thence S. 83 E. 14 poles to a small chestnut and locust, thence S. 510 poles crossing Buffalo Creek at 325 to a white on a hill side, thence N. 77 W. 113 poles crossing Buffalo creek again at 60 poles to two small white oaks, thence N. 37 W. 46 poles to a gum and large white oak corner to Raymond's line and with his line N. 5 E. 126 poles to a chestnut corner to Henry Kelley, thence with line N. 19 W. 99 poles to a white oak corner to James Ewin and with his line N. 6 E. 93 poles to a stone pile, thence E. 6 poles to stake and stone pile corner to said Deal's former survey, thence with the third line of the same E. 126 poles to a chestnut and white oak his corner, thence with another of his lines N. 143 poles to the place of beginning, with its appurtenances.

To have and to hold the said Tract or Parcel of Land, with its appurtenances, to the said Henry Deal, and his heirs forever.

In witness whereof, The said David Campbell, Esquire, Governor of the Commonwealth of Virginia, hath hereunto set his [SEAL.] hand and caused the Lesser Seal of the said Commonwealth to be affixed, at Richmond, on the 21st day of October in the year of our Lord one thousand eight hundred and 37 and of the Commonwealth the 62nd.

DAVID CAMPBELL.

3046 STATE OF WEST VIRGINIA,
Auditor's Office, City of Charleston, To wit:

I, A. C. Scherr, Auditor of the State of West Virginia, do hereby certify that the foregoing is a true copy of a paper purporting to be a grant from the State of Virginia to Henry Deal, dated the 21st day of October, 1837, on file in said Auditor's office among the certified copies of records received from the office of the Register of the Land office at Richmond, Virginia, and deposited in the said Auditor's Office, under Acts of the Legislature of West Virginia, passed February 24th, 1893 and February 20th, 1897.

Given under my hand and official seal, at Charleston, W. Va., this 30th day of July, 1906.

[SEAL.] A. C. SCHERR, *Auditor.*

3047 MONROE EXHIBIT No. 30.

Mr. Jesse Spurgin, His Patent, "Whipperwill," 177 Acres.

THE STATE OF MARYLAND &C.:

Know ye that whereas Jesse Spurgin of Allegany County had surveyed and laid out for him a tract or parcel of land called "Whipperwill", lying in the County aforesaid and containing one hundred and seventy-seven acres, by virtue of a Special Warrant for thirty acres, obtained by him the sixteenth day of April, Eighteen hundred and thirty-five, as appears, and he having fully compounded for said land according to law.

The State of Maryland, doth therefore, hereby Grant unto him the said Jesse Spurgin the said tract or parcel of land called "Whipperwill", lying in Allegany County aforesaid.

Beginning at a bounded Spanish Oak Tree standing on the line said to divide the State of Maryland from the State of Virginia and about one half mile, Westward of James James's Dwelling House, and running thence North sixty-four degrees East one hundred and thirty-two perches, South forty-two degrees East one hundred and fifty-eight perches, South twenty degrees West sixty-four perches, to two White Oak Trees marked with two notches each, North eighty-seven degrees West two hundred and three perches, to the aforesaid line, which is said to divide the State of Maryland from the State of Virginia, then by a straight line to the beginning.

Containing One hundred and seventy-seven acres, according to the Certificate of Survey thereof, taken and returned into the Western Shore Land Office bearing date the seventh day of May, Eighteen hundred and thirty-five, and there remaining together with all rights, profits, benefits and privileges thereunto belonging. To Have and To Hold the same unto him the said Jesse Spurgin his heirs and assigns forever.

Given under the Great Seal of the State of Maryland, this nineteenth day of July, Eighteen hundred and forty-two.

Witness the Honorable Theodorick Bland, Esquire, Chancellor.

FRANCIS THOMAS. [THE GREAT SEAL.]

THEODORICK BLAND, *Ch.*

3048 LAND OFFICE OF MARYLAND, *set:*

I hereby certify that the aforegoing is a true Copy of the Patent of "Whipperwill" 177 acres, as recorded in Liber G. G. B. No. 3 folio 632, one of the Record Books on file in this office.

In testimony whereof, I have hereunto set my hand and [SEAL.] affixed the Seal of the Land Office of Maryland, this seventeenth day of July, nineteen hundred and six.

E. STANLEY TOADVIN,
Commissioner of the Land Office.

3049 MONROE EXHIBIT No. 31.

Jesse Spurgeon, 240 Acres, Preston Co.

David Campbell, Esquire, Governor of the Commonwealth of Virginia, to all to whom these presents shall come, Greeting:

Know ye, That in conformity with a survey made on the 5th day of March, one thousand eight hundred and thirty-six, by virtue of Land Office Treasury Warrant No. 12514, there is granted by the said Commonwealth unto Jesse Spurgeon a certain tract or parcel of land, containing two hundred and forty acres situate in Preston County on the waters of Buffalo Run a branch of Yohagannia River including an improvement made by James Pinear & transferred by him to Milan Brunehill who transferred the same to said Jesse Spurgeon bounded as follows. Beginning at a chestnut 8 poles North of the beginning corner to said Spurgeon's Maryland Whipperwill survey & running thence S. 204 poles to a stone pile thence S. 77 W. 84 poles to a chestnut oak corner to Henry Deal's 1st survey also the 2nd corner to the survey made for Riner thence N. 50 W. 156 poles to a chestnut near the head of a drain corner to said Deal corner to David Sickles thence with 2 of Sickles' lines N. 2 E. 70 poles to a chestnut thence N. 52 W. 68 poles to a white oak then N. 62 E. 19 poles to a Spanish oak corner to Rebecca Ringer & with her line N. 33 E. 30 poles to a chestnut oak thence S. 63 E. 109 poles to a stone pile thence N. 66 E. 68 poles to a white oak thence S. 78 E. 58 poles to the beginning with its appurtenances.

To have and to hold the said Tract or Parcel of Land, with its appurtenances, to the said Jesse Spurgeon and his heirs forever.

In witness whereof, the said David Campbell, Esquire, Governor of the Commonwealth of Virginia hath hereunto set his hand and caused the Lesser Seal of the said Commonwealth to be [SEAL.] affixed, at Richmond, on the 21st day of October in the year of our Lord one thousand eight hundred and 37 and of the Commonwealth the 62nd.

DAVID CAMPBELL.

3050 STATE OF WEST VIRGINIA,
Auditor's Office, City of Charleston, To wit:

I, A. C. Scherr, Auditor of the State of West Virginia, do hereby certify that the foregoing is a true copy of a paper, purporting to be a grant from the State of Virginia to Jesse Spurgeon, dated the 21st day of October, 1837, on file in said Auditor's office among the certified copies of records received from the office of the Register of the Land office at Richmond, Virginia, and deposited in the said Auditor's Office, under Acts of the Legislature of West Virginia, passed February 24th, 1893, and February 20th, 1897.

Given under my hand and official seal, at Charleston, W. Va., this 20th day of July, 1906.

[SEAL.] A. C. SCHERR, *Auditor.*

3051 MONROE EXHIBIT No. 32.

Joseph Fear, 119 Acres, Preston Co.

William Smith, Esquire, Governor of the Commonwealth of Virginia, to all to whom these presents shall come, Greeting:

Know ye, That in conformity with a survey made on the 19th day of April, one thousand eight hundred and forty six, by virtue of Land Office Treasury Warrant No. 3067, there is granted by the said Commonwealth unto Joseph Fear a certain tract or parcel of land containing one hundred and nineteen acres lying and being in the county of Preston adjoining lands of David Evans, More Jatler and David Van Sickler & bounded as follows. Beginning at a Locust corner to David Evans Thence S. 35 W. 28 poles to a chestnut corner to More N. 31 W. with said More's land 140 poles to a white oak corner to David Van Sickle with his line N. 50 E. 163 poles to stone pile E. 42 poles to pointers S. 192 poles to a stone pile S. 83 W. 40 poles to a black oak N. 11 E. 20 poles to birch corner to said Fear Thence with 3 other- of said Fear's lines N. 65 poles to 2 white oaks S. 74 W. 86 poles to white oak S. 30 E. 76 poles to the beginning with its appurtenances.

To have and to hold the said Tract or Parcel of Land, with its appurtenances, to the said Joseph Fear and his heirs forever.

In witness whereof the said William Smith, Esquire, Governor of the Commonwealth of Virginia, hath hereunto set his hand and caused the Lesser Seal of the said Commonwealth to be [SEAL.] affixed, at Richmond, on the 31 day of January in the year of our Lord one thousand eight hundred and 48 and of the Commonwealth the 72nd.

WM. SMITH.

3052 STATE OF WEST VIRGINIA,
Auditor's Officer, City of Charleston, To wit:

I, A. C. Scherr, Auditor of the State of West Virginia, do hereby certify that the foregoing is a true copy of a paper, purporting to be a grant from the State of Virginia to Joseph Fear, dated the 31st day of January, 1848, on file in said Auditor's office among the certified copies of records received from the office of the Register of the Land office at Richmond, Virginia, and deposited in the said Auditor's Office, under Acts of the Legislature of West Virginia, passed February 24th, 1893, and February 20th, 1897.

Given under my hand and official seal, at Charleston, W. Va., this 20th day of July, 1906.

[SEAL.] A. C. SCHERR, *Auditor.*

3053 MONROE EXHIBIT No. 33.

David Van Sickle, 100 Preston.

Littleton W. Tazewell, Esquire, Governor of the Commonwealth of Virginia, to all to whom these presents shall come, Greeting:

Know ye, That in conformity with a survey made on the 23rd day of January, one thousand eight hundred and thirty three, by virtue of Land Office Treasury Warrant No. 2616, issued December 14th, 1831, there is granted by the said Commonwealth unto David Van Sickle, a certain Tract of Parcel of Land, containing one hundred acres situate in Preston County on a small drain including two springs running into Buffalo Run which springs is near a half mile north of the road leading from Jesse Spurgeon's Selviesport & to adjoins John Mackey's entry and improvement on the East side and bounded as followeth to wit. Beginning at a white oak near two springs running into Buffalo Creek and running thence N. 60 W. 80 poles to a white oak thence N. 57 E. 124 poles to a stone pile thence N. 10 E. 85 poles to a stone pile thence N. 75 E. 79 poles to a small Spanish oak and stone pile thence S. 100 poles to a stone pile thence S. 50 W. 163 poles to the beginning.

To have and to hold the said Tract or Parcel of Land, with its appurtenances, to the said David Vansickle and his heirs forever.

In witness whereof, The said Littleton W. Tazewell, Esquire, Governor of the Commonwealth of Virginia hath hereunto set his hand and caused the Lesser Seal of the said Commonwealth to be affixed, at Richmond, on the 20th day of September in the year of our Lord one thousand eight hundred and 34 and of the Commonwealth the 59th.

[SEAL.] LITTLETON W. TAZEWELL.

3054 STATE OF WEST VIRGINIA,
Auditor's Office, City of Charleston, To wit:

I, A. C. Scherr, Auditor of the State of West Virginia, do hereby certify that the foregoing is a true copy of a paper, purporting to be a grant from the State of Virginia to David Vansickle, dated the 20th day of September, 1834, on file in the said Auditor's office among the certified copies of records received from the Register of the Land office at Richmond, Virginia, and deposited in the said Auditor's Office, under Acts of the Legislature of West Virginia, passed February 24th, 1893, and February 20th, 1897.

Given under my hand and official seal, at Charleston, W. Va., this 20th day of July, 1906.

[SEAL.] A. C. SCHERR, *Auditor.*

3055 MONROE EXHIBIT No. 34.

L. Van Sickle (120), Preston.

Littleton W. Tazewell, Esquire, Governor of the Commonwealth of Virginia, to all to whom these presents shall come, Greeting:

Know Ye, That in conformity with a survey made on the 2nd day of February, one thousand eight hundred and thirty three, by virtue of Land Office Exchange Treasury Warrant, N-. 2616, there is granted by the said Commonwealth unto Lewis Van Sickle a certain Tract or Parcel of land containing one hundred and twenty acres, situate in Preston County on the waters of Buffalo Creek adjoining David Van Sickle's survey of one hundred acres on the north and is bounded as follows. Beginning at a stone pile corner to David Van Sickle's survey of one hundred acres and running thence with his 4th line N. 75 E. 79 poles to a stone pile small Spanish oak thence E. 42 poles to a stone pile then N. 121 poles to a stake in a deep hollow thence W. 41 poles to a Spanish oak on the point of a hill and thence S. 78 W. 114 poles to a white oak and stone pile thence S. 20 W. 38 poles to a chestnut S. 7 E. 64 poles to a white oak near a drain thence S. 56 E. 47 poles crossing said drain to the stone pile on a ridge the place of beginning with its appurtenances.

To have and to hold the said Tract or Parcel of Land, with its appurtenances, to the said Lewis Van Sickle and his heirs forever.

In witness whereof, The said Littleton W. Tazewell, Esquire, Governor of the Commonwealth of Virginia, hath here- [SEAL.] unto set his hand and caused the Lesser Seal of the said Commonwealth to be affixed, at Richmond, on the 10th day of November in the year of our Lord one thousand eight hundred and 34 and of the Commonwealth the 59th.

LITT'N W. TAZEWELL.

3056 STATE OF WEST VIRGINIA,
Auditor's Office, City of Charleston, To wit:

I, A. C. Scherr, Auditor of the State of West Virginia, do hereby certify that the foregoing is a true copy of a paper, purporting to be a grant from the State of Virginia to L. Vansickle, dated the 10th day of November, 1834, on file in the said Auditor's office among the certified copies of records received from the office of the Register of the Land office at Richmond Virginia, and deposited in the said Auditor's Office, under Acts of the Legislature of West Virginia, passed February 24th, 1893, and February 20th, 1897.

Given under my hand and official seal, at Charleston, W. Va., this 20th day of July, 1906.

[SEAL.] A. C. SCHERR, *Auditor.*

(Here follows map.)

Book 1 page 52
3057
120 Acres

3057 MONROE EXHIBIT No. 35.

February 2d, 1833, surveyed for Lewis Van Sickle Assee, of Buckner Fairfax who is Assee. of Alexander King, who (in part is Assee of David Holmes, 120 acres of land in Preston County; part of a Land Office Exchange Treasury Warrant of 2179 acres No. 2616 date the 14th day of December, 1831, entered the 1st day of February, 1833, on the waters of Buffalo Creek adjoining David Vansickle on the North, and is bounded as follows:

Beginning at a stone pile, corner to David Vansickle, and running thence with his 4 line N. 75 E. 79 poles to a stone pile and small Spanish oak; thence East 42 poles to a stone pile; thence North 121 poles to a stake in a deep hollow; thence West 41 poles to a Chestnut & Spanish Oak on the point of a hill; thence S. 78° W. 114 poles to a W. O. and stone pile; thence S. 20 W. 38 poles to a Chestnut; thence S. 7° E. 64 poles to a White Oak near a drain; thence S. 56 E. 47 poles crossing said drain to a stone pile on a ridge, corner to David Vansickle and the place of beginning.

HORACE LUDINGTON,
Ass't to Buckner Fairfax, S. P. C.

Platted 40 ps. Inch.
May. Var. 1° 15′ West.
A copy from the Record.
Attest:

GEO. A. WALLS, *Clerk.*

3058 MONROE EXHIBIT No. 36.

Final Report of the Joint Boundary Commission on the Parallel Boundary Between West Virginia and Pennsylvania.

J. C. Gist, John J. Chipley, F. L. Hoge, Commissioners on the part of West Virginia.
W. W. Walker, Commissioner on the part of Pennsylvania.
C. H. Sinclair, U. S. Coast and Geodetic Survey, for the Commission.

Charleston:
Jas. B. Taney, Public Printer.
1886.

3059 *Final Report of the Joint Boundary Commission on the Parallel Boundary Between West Virginia and Pennsylvania.*

J. C. Gist, John J. Chipley, F. L. Hoge, Commissioners on the part of West Virginia.
W. W. Walker, Commissioner on the part of Pennsylvania.
C. H. Sinclair, U. S. Coast and Geodetic Survey, for the Commission.

Charleston:
Jas. B. Taney, Public Printer.
1886.

3060 *Final Report of the Joint Boundary Commission on the Parallel Boundary Between West Virginia and Pennsylvania.*

Hon. Henry S. Walker, Secretary of State.

SIR: In compliance with the requirements of the third section of the Act entitled, "An Act in regard to the boundary monuments on the line between the States of Pennsylvania and West Virginia, with an appropriation for the expense of the same," I have the honor to transmit, for file in your office, the final report of the Joint Commission, appointed by authority of said act, to examine as to the true location of the monuments which mark the boundary line between this State and the State of Pennsylvania, and to replace any monuments which have become dilapidated or been removed from the boundary line between said States, accompanied by the report of Mr. C. H. Sinclair, of the U. S. Coast and Geodetic Survey, who ran the line, with maps and drafts necessary to a clear understanding of the same.

Respectfully, your obedient servant,

F. L. HOGE,
Secretary of the Joint Commission.

Wheeling, W. Va., October 16, 1886.

3061 The Joint Commission appointed by the States of Pennsylvania and West Virginia, to re-locate the boundary line between those states, take pleasure in reporting the completion of the work for which it was selected. By reference to our report made in 1883, it will be seen that the meridian boundary (about sixty-four miles in length) and the parallel boundary for a distance of twenty one miles from the South West corner of Pennsylvania, had been surveyed and marked; also a further distance of fourteen and three-tenths miles of the latter boundary surveyed, when the exhaustion of the appropriation, caused a suspension of the work. It was not until the legislatures of 1885 had made the appropriation estimated by the Commissioners as necessary to complete the survey and marking of the East and West lines, that work could be resumed.

The Secretary of the U. S. Treasury, having at our request, kindly detailed Mr. C. H. Sinclair of the U. S. Coast and Geodetic Survey, that gentleman in September, 1885, resumed the field work where it had been suspended in 1883, and completed the survey to the Maryland line about the middle of October. Mr. Sinclair was enabled by the possession of Mason and Dixon's notes of the survey of 1767, to clearly identify the old mounds and thus accurately retrace the old line. For reasons, which a reading of Mr. Sinclair's report makes obvious, the Commissioners in charge of running the line determined to attempt no rectification of this portion of the line, but to permanently mark it as retraced by Mr. Sinclair.

Capt. Chipley, who had charge of the work of setting the monuments, came out as soon as the survey was completed, contracted for

the stone, and superintended the planting of them. This work was completed by the middle of November.

The first twenty-one miles had already been marked under the supervision of Mr. McCullough. On receiving notice of the readiness of Mr. Sinclair to report, a meeting of the Joint Commission was called and held in Pittsburgh, Pennsylvania, on the 28th day of January, 1886. At the meeting were present, Messrs. Gist,
Chipley and Hoge, on the part of West Virginia, and Messrs.
3062 McCullough and Walker on the part of Pennsylvania, our
honored chairman, Col. James Worrall of the latter State having been removed by death.

Owing to indisposition, Mr. McCullough, who had been elected to the vacant chair, requested Mr. Gist to preside.

Mr. Sinclair, who was present, presented his report with two admirably executed charts, embracing everything necessary to a clear understanding of the survey. Before resuming field-work in 1885, Mr. Sinclair had endeavored to obtain information in regard to the monument which marks in the Pennsylvania line the termination of a meridian run by Lieut. Michler of the U. S. Engineers for the Maryland and Virginia Joint Commission in 1859. No report of that commission or copy of it was on file in the records of West Virginia, and the line above referred to appears never to have been accepted by either Virginia or West Virginia as the western boundary of Maryland.

Acting on the same principle which controlled it in the establishment of the North and South boundary between Pennsylvania and West Virginia, this commission determined to terminate its work at what has been known for years as the intersection of the Virginia and Maryland boundary and the southern line of Pennsylvania. On motion of Mr. Gist, it was resolved, that a suitable monument should be erected at the point above mentioned and that the commissioners and Mr. Sinclair should be present to superintend its location.

On motion of Mr. Hoge, the Chair appointed Messrs. Walker of Pennsylvania, and Chipley of West Virginia, to audit the accounts of Messrs. McCullough and Hoge of expenditures in the prosecution of the work of the Commission, and to determine a basis of settlement between the two States.

This Committee, after due examination, reported that after the payment by Mr. McCullough of $103.00 due Mr. Sinclair, there would be due the State of Pennsylvania from West Virginia $12.49; the expenditures of Pennsylvania, after the payment of Mr. Sinclair's bill, amounting at the time of this meeting to $4,817.66, and those of West Virginia to $4,805.17.

Prior to adjournment to meet at the Maryland corner, the Commission adopted resolutions expressing its deep regret at the
3063 removal by death of its honored Chairman, Col. James Worrall, of Pennsylvania. His long experience in public life, his acknowledged integrity, ability and energy, and the great interest taken by him despite of failing health, in the business of this Commission secured for him its confidence and respect, and deserve

this expression of our high appreciation of his many excellent qualities.

Mr. Sinclair having indicated the first of April as the time when he could be present at the erection of the monument in Maryland line, a meeting of the Commission was appointed for that time. At this meeting, owing to the detention of Messrs. Walker and Chipley by floods, and of Mr. McCullough by illness, only Messrs. Gist and Hoge were at the appointed place to meet Mr. Sinclair. As the monument was found to have been delivered at the proper point, and the necessary force present to place it in position, Messrs. Gist and Hoge determined to proceed with the work and not await the arrival of the other Commissioners. The spot for locating the monument was first ascertained by measurement from the meridian monument erected by Lieut. Michler, of the U. S. Engineers (whose notes Mr. Sinclair had obtained) and from the testimony of adjacent land-owners, old residents and surveyors.

A full description of the monument was given in Mr. Sinclair's report. On the north face is inscribed the date of survey, 1885, and the initials "Pa." The south, east and west faces are divided into equal parts by a vertical line intended to show the intersection of the State lines. On the north half of the east face is inscribed the initials "Pa."; on the south half the initials Md."; on the east half of the south face the initials "Md."; on the west half the initials "W. V." The south half of the west face bears the initials "W. V." and the north half the initials "Pa."

During the preparation of this report, the Commission has received intelligence of the death of another of its members, that of Mr. James McCullough, of Pennsylvania. Though well advanced in years, Mr. McCullough, as a member of the Executive Committee, has from the beginning of the survey in May, 1883, to the end in November, 1885, shown a zeal and energy commendable in a much younger man; in fact, it may be said that the last years of his life were devoted to this service.

We cannot close this report without the expression of our
3064 sense of obligation to Mr. Sinclair for the able and thorough manner in which he has conducted the survey. The Commission congratulates itself on having secured the services of a gentleman so accomplished in his profession, and views the severances of its very pleasant relations with him with sincere regret.

The joint expenses of the two States in the prosecution of the work for which this Commission was created amount to ($9,689.75) nine thousand six hundred and eighty-nine and 75/100 dollars. Mr. Sinclair's report, with charts, accompany and are made part of this report.

Respectfully submitted,

J. C. GIST,
JOHN J. CHIPLEY,
F. L. HOGE,
Commissioners on the Part of West Virginia.

W. W. WALKER,
Commissioner on the Part of Pennsylvania.

NOTE.—The maps of Mr. Sinclair had received Mr. McCullough's approval prior to the writing of this report.

F. L. HOGE,
Sec'y Joint Commission.

3065 *Report on the Survey of the Parallel Boundary between Pennsylvania and West Virginia,* 1885.

CHARLOTTESVILLE, VA., *January* 15, 1886.

Hon. James McCullough, Chairman of the Pennsylvania and West Virginia Boundary Commission, Cannonsburg, Pa.

DEAR SIR: I take great pleasure in submitting to the Commissioners my final report on the completion of the survey of the parallel boundary between the States of Pennsylvania and West Virginia.

Upon application of the Commissioners to the Secretary of the Treasury, I was detached from duty in Kansas and directed to take charge of this work. I started to Washington on September 4th, to secure the instruments necessary for conducting the survey. Every facility was given me at the Coast and Geodetic Survey Office, so that in a week after reaching Washington I was able to leave for the field. As soon as possible the Commissioners were notified of the date on which I would be at Point Marion, the nearest point for beginning the work, where accommodations could be found for the party.

I reached Point Marion on the 15th of September with the instruments and outfit, and was ready for starting the field work, but owing to the short notice given to the Commissioners the party did not assemble until the 23rd.

In the meantime I determined the azimuth for ranging out the line by twenty-four observations on Polaris, and error of the chronometer by means of five time stars, at a point 242 feet east and four feet south of the terminal mound of the third tangent of 1883, and with the kind assistance of Mr. Joseph Burchinal looked for old mounds to the eastward on the mountains, and opened
3066 a line through the heavy woods on the summit and west side of the Laurel Hills besides locating a forward point on the summit 4.5 miles distant from the beginning of the tangent.

The work was conducted precisely as in 1883 so that it is unnecessary here to describe it in detail. Practically the same instruments were used also.

You will recollect that the entire distance between the southwest corner of Pennsylvania and the Maryland corner was divided into four sections, and that three of these were surveyed in 1883. Only the fourth or last section was run in 1885.

The Superintendent was not able to assign me an assistant, in consequence of which it was necessary for me to both range out the tangent or guide line and afterwards measure its length and locate all the old boundary marks.

On the 24th of September, the day after the party arrived, points were interpolated between the azimuth station and the summit of

the Laurel Hills, and next day the large transit was moved to the forward point 4.5 miles distant, from which another point was located on the heavily wooded ridge owned by J. W. Kelley, a little more than two miles further east. When the transit was set up at this new station it was found necessary to move it about 1,000 feet, to the eastward on the second summit of the same ridge, in order to overlook a long timbered slope and see a high ridge somewhat more than a mile away.

From this second station on Kelley's ridge, a sight of more than nine miles was obtained to the ridge just beyond the Five Forks, owned by Adam Sliger, and points were interpolated on all of the prominent intervening hills. Two more short sights from Sliger's ridge, of about 1.5 miles each, carried us practically to the Maryland corner, which point was reached on the 8th of October, and the measurement of the line was begun in the afternoon of the same day.

As in 1883 small triangulation was employed for getting the distances, on account of the broken character of the country.

3067 By the 19th of October, despite frequent rains, the measurement of the fourth tangent was completed. Between the showers next day, a point was located on the high bluff near the east bank of the Cheat river, and on the 21st, all of the third tangent and a part of the second, as far as Mt. Morris, was reviewed—a distance of 11.5 miles—to locate several new stubs and see that the pegs of 1883 were still in place. This completed the work of the organized party, which was then ready to be discharged.

By the 26th of October I had computed the position of the intermediate points on the fourth tangent, set the pegs and left for Harrisburg to obtain additional data for constructing the charts. I found it also necessary to visit Philadelphia to consult Mason and Dixon's field notes, and to secure material for the maps.

On the fourth or last tangent there were eighteen old mounds or line marks used in retracing the boundary. Most of them were well defined mounds or stone heaps. One was a line tree, another a line fence. On the last section the fences were very generally on the line. The large stone that marks the north end of the meridian through the Fairfax stone was also used as a line mark.

After leaving the initial mound on the fourth tangent, the first line mark is a white oak tree on the east side of the Morgantown and Fairchance pike, between the lands of Messrs. Williams on the north and Pugh on the south. The new monument was placed on the west side of this tree at 1.95 miles distant and four feet north of the tangent. An old stone heap was supposed to have been on the mountain side about half a mile east of this point, but no one knew its position.

The next mark is a well defined stone pile in the midst of thick timber about one mile west of the summit of the Laurel Hills. Both sides of the line are owned by the Fairchance Furnace Co. A long cut was made about twenty feet south, extending east and west. The new monument, was set in the center of the stone pile, at 3.6 miles and 29.6 feet north of tangent. The next old mark is a

stone pile about 700 feet east of the summit of the Laurel
3068 Hills, in a very inaccessible place on the steep mountain side. Both sides are owned by the Fairchance Furnace Co. It is 4.6 miles and 35 feet north of the tangent. Instead of marking this mound with a stone monument, a new position was selected on the top of the mountain, commanding an extensive view east and west, at a distance of 4.45 miles and 34.3 feet north of the tangent.

The next mark is the line fence on the north side of Mr. Grimm's land. This fence is ten feet north of the line between the next mounds east and west of it, but its position was well defined and the boundary through here is not more irregular than that portion near the west foot of the Laurel Hills. There was no authority for making any change. The new monument was placed 5.5 miles distant and 58 feet north of the tangent.

The next mark is a well defined stone pile on the easterly of the two ridges of Kelley's mountain. It is about 800 feet east of this second summit and cliff of large rock. Messrs. Barnes and Caruthers own the north and J. W. Kelley the south side. The new monument was placed in the center of the pile at a distance of 6.55 miles and 61.7 north of tangent.

The next mark is a well defined earth mound on a high hill with heavy woods on the north, owned by Jackson Meyers, and a cleared field south, owned by Jesse Smith. It is about 400 feet east of the Haydentown road. The new monument was placed in the center 7.65 miles distant, and 68.5 feet north of the tangent.

The next mark is the remains of a stone heap on a high cleared hill under the line fence between the land of Jonas Maust on the south, and Mrs. Haines on the north side. It is about 3/4 mile west of Big Sandy Creek. At one time the land on both sides was owned by one man, and he removed most of the stones from the midst of the field. The place was pointed out by one of the land owners who has known the location for fifty years, and remembers well the old stone heaps. The new monument was set in the center, at a distance of 9.15 miles and 89.7 feet north of the tangent.

The next mark is a very large earth mound on the top of the south side of the public road, running along the line here. The north side is owned by Joseph Prinkey, south side by John Harader.

An old graveyard, enclosed by a stone wall, projects into
3069 the road on the north side, within fifty feet of the mound. The new monument was placed in the center at a distance of 10.8 miles and 123.5 feet north of the tangent. About half a mile west of this was a mound recently destroyed while the road was being worked.

The next mark is a well defined earth mound about half a mile east of the old graveyard above mentioned. It is on the west side of a small run about 800 feet west of Little Sandy creek, in a deep wooded hollow. The north side is owned by Samuel Maust, south side by Lawrence Niner. As this is so close to the preceding, no stone monument was placed here. Distance from the initial 11.35 miles and 133.1 feet north of the tangent.

The next mark is an earth mound, very indistinct but with its

position well preserved by the junction of three estates, John Seese and Price McClellan on the north, and Henry Carter on the south side. The new monument was placed in the center 11.85 miles distant and 146.25 feet north of the tangent.

The next mark is a well defined stone heap on a high cleared hill between the land of Ezra Thomas on the north and Samuel Thomas on the south side. It is at the east end and a little south of a short stone fence. The new monument was set in the center at a distance of 13.15 miles and 180 feet north of the tangent.

The next mark is an irregular stone pile in a large body of woods —though near the mound the woods are small and sparse—down in an extensive flat not near any fence or good reference mark. The north side is owned by Marshall Wright, south side by Harrison H. Glover. Distance 14.35 miles and 195.48 feet north of the tangent. A new monument was set in the center.

The next mark is a very large earth mound on the south side of the line road, on top of Sliger's ridge, about 1,000 feet east of the Five Forks. Woods on the north side owned by Christopher Dennis, cleared on the south owned by Adam Sliger. The new monument was placed in the center at a distance of 15.8 miles and 228.65 feet north of the tangent.

3070 The next mark is a well defined irregular stone heap under the line fence, with woods on the north, owned by Perry Rynd, and cleared field south owned by Alpheus Cuppett. It is on the north slope of the hill. A new monument was set in the center, distant 17.35 miles and 269.84 feet north of the tangent.

The next mark is a large well defined stone pile on a high hill in the woods, about 1,300 feet west of the Brandonville and Somerfield pike. The north side is owned by James Fearer; south side by John Glass. The new monument was placed in the center. Distance 8.4 miles and 298.9 feet north of the tangent.

The next mark is the large sandstone that marks the north end of the meridian through the Fairfax stone on the east side of the Brandonville and Somerfield pike. This stone was set in 1859 by the party of Lieutenant Michler. It is about fifteen inches square at the base, tapering smaller towards the top and terminates in a pyramid. It is six feet long, three and a half feet out of ground. The north side is owned by John Glass, south side by Sebastian Dean. Distance from the initial is 18.65 miles and 310.51 feet north of the tangent.

The last mound marks the junction with Maryland. It is three fourths of a mile east of the stone above described.

The new monument was placed in the center, and is 19.45 miles distant and 333.53 feet north of the tangent.

Abraham Thomas owns the land on the south side. This monument is sixteen inches square, dressed three and one half feet and rough cut three and one half feet. The underground cube is 16 x 16 x 16 inches.

As was indicated by the last three mounds on the third tangent in 1883, the line tends to come back towards the theoretic curve through the southwest corner of Pennsylvania. The stone pile one mile east of the summit of the Laurel Hills is 36 miles distant and 25.6 feet

north of the tangent through the first mound. It should have been theoretically 7.1 feet north, showing thus a bend to the north of 18.5 feet, a very rapid gain.

The eighth mound, at a distance of 10.8 miles, has an
3071 offset of 119.5 feet. Theory makes it 64.7 feet; the bend north is therefore 54.8 feet.

At the stone marking the north end of the meridian through the Fairfax stone, the offset is 306.5 feet. It should have been by theory 193.0 feet, showing a bend to the north of 113.5 feet.

At the junction with Maryland, 19.45 miles distant, the offset is 329.5 feet north of the tangent through the first mound. It should have been theoretically 208.5 feet, showing an accumulation of bend to the north 121.0 feet. (See table at the end.)

The initial mound of the fourth tangent is 172.1 feet south of the theoretic course through the south west corner of Pennsylvania, and the bend north at the end of the line amounts to 121.0 feet so that the line at the termination is only 51.1 feet south of this theoretic course.

Taking the line, section by section, it will be seen that the apparently regular part is very irregular, that is, when referred to the astronomical parallel, and that the irregular portions are about as well laid down as the other.

The first section between the S. W. corner, latitude 39 degrees 43 minutes 18.19 seconds, and Lantz's Hill, latitude 39 degrees 43 minutes 18.97 seconds. By reference to the theoretic curve the S. W. corner, the old post hole on Lantz's Hill falls 11.75 feet south; astronomically it is 78.93 feet north, or the line in 11.5 miles is in error 90.68 feet.

If the astronomical parallel should be insisted upon, the line would have to be made very irregular, instead of the almost theoretic curve now existing.

The next section, Lantz's Hill, latitude 39 degrees 43 minutes 18.97 seconds, and Bald Hill, latitude 39 degrees, 43 minutes 18.44 seconds, (the latitude station is one and a half miles west, but the latitude here is assumed to be the same). The old mound on Bald Hill is about fifty-four feet south of the point on Lantz's Hill, astronomically. It is 69.7 feet south of the theoretic curve through
3072 Lantz's Hill, or in fourteen miles the line is in error only about 15.7 feet. This theoretically irregular portion is thus seen to be astronomically quite regular.

The next section, Bald Hill, latitude 39 degrees 43 minutes 18.44 seconds, and Harvey's latitude 39 degrees 43 minutes 18.14 seconds. Astronomically, Harvey's is a little over thirty feet south of Bald Hill; referred to the theoretic curve through Bald Hill, it is over eighty-five feet south; the error in ten miles is about 55 feet.

The last section, Harvey's latitude 39 degrees 43 minutes 18.14 seconds and the north terminus of the Fairfax stone meridian, 1859, latitude 39 degrees, 43 minutes 17.92 seconds. (Latitude was observed at this stone, and I use this instead of the end of the line three-fourths mile east.) The latter is 22.26 feet south of the former astronomically; by reference to the theoretic curve through Harvey's

it is 113 5 feet north of Harvey's, or an error of 135.8 feet in 18.65 miles.

On a uniform spheroid, one with no irregularities in elevation and no variation in density, it would be a very simple matter to lay down a parallel of latitude, but when we have to deal with a very uneven surface and deviation of the plumb line or displacement of the zenith, the laying down of such a line becomes both difficult and expensive, consequently, astronomers adopt practical, rather than purely theoretical methods in dealing with boundaries of this nature. All are approximations.

A wholesale correction of this boundary would have caused endless litigation and a large outlay of money, without and practical return to the States. Where the old marks were so numerous as on the last thirty four miles, there was no occasion for making any change in existing points, and on the first part of the line, where the marks were rather scarce, no material change was made in the traditional boundary.

Quite a number of the old mounds on the portion run by Mason and Dixon have been identified by the close agreement of the two measurements. It is thus very easy to prove that the stopping place of Mason and Dixon is not the "second crossing of Dunkard,"
3073 but Brown's Hill, a short distance West of the third crossing of Dunkard. Besides the agreement of distances between the last seven or eight mounds on the West end of Mason and Dixon's work, an extract from their field notes found in the State Department, Washington, D. C., gives positive evidence of the West terminus being a mound on a high hill.

"The sector stood on ye top of a very lofty ridge, but when ye offset was made of 3 chains, 38 links, it fell a little Eastward of the top of ye hill; we therefore extended ye true parallel 3 chains, 80 links Westward, which fell on ye top of said ridge; there, viz: at 233 miles, 17 chains, 48 links from the post marked West in Mr. Bryan's field we set up a post ma-ked W. on ye West side, and heaped around it earth and stone three yards and a half diameter at ye bottom and five feet high. The figure nearly conical." This post is 230 miles, 18 chains, 21 links from the beginning of the West line.

The mound on Brown's Hill was the most westerly one found during the survey of the boundary.

There were several places where the mounds (or traditions of mounds) were too close together for mile marks, and I was not able to account for them until Mason and Dixon's notes were consulted. From these I learned that mounds had been placed not only at every mile, but also on the summit of the prominent ridges. It is very evident that many of the mild mounds fell in hollows or on the hill sides and were destroyed in the course of time, and that most of those now in existence are the ridge mounds, and the distances between these of course vary as the hills themselves. These ridge mounds are the principal ones marked with new stone monuments.

No attempt was made to restore the mile marks, as the adjacent ridges are intervisible and generally not very far apart.

There are two charts of the line, both on a scale of 1-40.000. The

first was designed to show the method of tracing the boundary by means of tangents, all the old line marks, the new monuments and the variation of the boundary from a theoretic curve and a uniform spheroid. This theoretic curve is drawn through southwest corner of Pennsylvania for convenience; it might just as well have
3074 been assumed through any other point or even made the mean theoretic parallel.

The second chart shows the State line in plan, and is the complete map of the boundary, giving the stones by number, and the distances in miles and feet, counting from the south west corner.

These two maps are essential for showing all the details of the survey, and are complete in themselves without reference to the chart of 1883, which is included in the first, with some changes.

Yours respectfully,

C. H. SINCLAIR,
Coast and Geodetic Survey.

JAMES McCULLOUGH,
W. W. WALKER,
Commissioners of Pennsylvania.
J. C. GIST,
JOHN J. CHIPLEY,
F. L. HOGE,
Commissioners of West Virginia.

Object.	Distances on tangent.		North of tangent.	Theoretic offsets.	Bend of line.	South of theoretic curve through S. W. corner.	Remarks.
	Miles.	Feet.	Feet.	Feet.	Feet.	Feet.	
26″ New Mon't (old mound)	0	0.0	0.0	0 0	0.0	172.1	Harvey.
27″ " " (line tree)	1	5037.1	0.0	2.1	2.1 S.	174.2	Pugh.
28″ " " (old mound)	3	3116.2	25 6	7.1	18.5 N.	153.6	W. of s'mt Laurel Hills.
29″ " " ...	4	2406.6	30.3	11.3	19.0	153.1	Summit Laurel Hills.
Old mound E. of summit	4	3091.6	31.0	11.6	19.4	152.7	No new monument.
30″ new Mon't (line fence)	5	2510 6	54.0	16.6	37.4	134.7	Grimm.
31″ " " (old mound)	6	2820.6	57.7	23.6	33.1	139.0	Kelly.
32″ " " (old mound)	7	3366.9	64.5	32.2	32.3	139.8	Myers.
33″ " " (old mound)	9	787.8	85.7	46.2	39.5	132 6	Haines.
34″ " " (old mound)	10	4316.0	119.5	64.7	54.8	117.3	Prinkey.
Old m'nd W. of Little Sandy	11	1905 6	129.1	71 4	57.7	114 4	No new monument.
35″ new Mon't (old mound)	11	4634.3	142.2	78.0	64.2	107.9	Carter.
36″ " " (old mound)	13	876 1	176.0	95 8	80 2	91.9	Thomas.
37″ " " (old mound)	14	1825.9	191.5	113.8	77.7	94.4	Glover.
38″ " " (old mound)	15	4198.5	224 6	137 9	86.7	85.4	Sliger.
39″ " " (old mound)	17	1830.6	265.8	166.3	99.5	72.6	Cuppet.
40″ " " (old mound)	18	2215.7	294.9	187.5	107.4	64.7	Glass.
N. end of Meridian through Fairfax Stone	18	3547.1	306 5	193.0	113.5	58 6	East side of Pike.
Maryland corner (old m'nd)	19	2237.1	329.5	208.5	121.0	51.1	End of the line.

Tangent corrected for constant offset.

PAGE BOUND VERTICAL IN BOOK

3076 *Treasurer's Report.*

State of West Virginia in Account with Pennsylvania and W. Va. Boundary Commission.

1879.		Expenses to Com. Conference.....	$2.55
1883.			
April	10.	Expenses to Pittsburgh.....	4.90
	11.	" of J J. Chipley.....	24.20
	11.	Per diem of the same.....	24.00
	11.	Secretary of State and Keeper of Rolls..	5.00
	12.	Books for Joint Commission.....	.90
May	1.	Per diem B. and I. Hardesty.....	25.00
	7.	Incidentals (telegrams, &c.).....	.52
	8.	Fare to Smith's Ferry.....	1.55
	8.	B. F. Hardesty.....	1.00
	10.	Board of party at Smith's Ferry.....	30.50
	11.	Sundries.....	4.26
	13.	Umbrella for transit, 2.25; Sinclair, 5.00; Pendleton H., 4.00.....	11.25
	13.	Board at East Liverpool, etc.....	3.30
	13.	Muslin for signals.....	1.75
	14.	C. H. Sinclair.....	20.00
	15.	Livery and board of party.....	50.50
	15.	Hardware.....	2.24
	16.	Board of party and mdse.....	25.25
	18.	Board and livery.....	8.00
	18.	Mdse., &c.....	5.75
	19.	Livery and board.....	16.95
	20.	Board, ax, &c.....	7.40
	20.	Expenses to Smith's Ferry, &c.....	2.50
	21.	Board, &c.....	3.50
	22.	Board of party and expenses to Fairview..	22.25
	23.	Express, &c., to N. Cumberland.....	1.30
	24.	Axmen, &c., 3.00; C. H. Van Orden, 15.00.....	18.00
	25.	Mdse. and ferry.....	2.39
	25.	Board and axmen at Crosses, and advancements to men.....	37.65
	25.	Gardner & Scott.....	6.55
	27.	Board of party, railroad fare, &c.....	5.95
	28.	Satchel for instruments.....	1.50
	29.	Scott, 20.00; Mdse., 2.65; draft for C. H. Sinclair, 75.25.....	97.90
	30.	Board at Kline's.....	1.80
	31.	Board, 5.35; Scott, 5.00, I. H. L. 10.00..	20.35
1883.			
June	1.	Expenses to Steubenville.....	1.30
	2.	Kline on acc't, 20.00; B. F. H., 10.00; H. H. P., 10.00; C. H. Van Orden, 40.00; Mdse., .20.....	80.20

BLURRED PAGES

	3. Scott, 1.50; Farish, 1.30; ferry 20 c.....	3.00
	6. Farish for expenses, 10.00; board of party, 31.75	41.75
	8. Munnell, 1.00; Hardesty, 3.00.....	4.00
	9. Munnell, 10.00; Foutz, 3.00; I. H. L., 50 c.; Chipley, 2.00; Farish, 10.00; George M., 2.00; Nickels, 1.50.....	29.00
	10. Munnell, 5.00; Hardesty, 5.00.....	10.00
	12. Farish for expenses, 7.00; Col. Gist, 66.00.	73.00
	13. Horse hire	.50
	14. Board at Armstrong's.....	2.00
May	14. Guy for fence.....	3.00
	14. Scott and self, W. Alexander.....	1.50
3077		
	15. Board, &c.	5.30
	15. Scott and mdse.....	1.25
	17. Board and fare.....	4.60
	18. B. F. Hardesty, 25.00; Van Orden, 40.00; J. J. Chipley, 30.00; railroad and dinner, 1.20	96.20
June	20. Expenses at Cameron.....	.65
	22. Board at Griffith's.....	2.50
	22. Board at McGuffy's, &c.....	1.65
	26. I. L. Hardesty on account.....	10.00
	26. C. H. Sinclair, 80.00; Chipley, 12.05....	92.05
	26. Board at Black's.....	1.20
	26. R. R. fare.....	1.80
	29. Chipley, J. J.....	25.00
July	2. B. F. H. 10.00; I. L. H. 10.00; Van Orden, 30.00; H. H. Pendleton, 20.00; Rine for livery, 18.00; Chipley, 25.25.	113.25
	2. Farish, 10.00; Hall, 2.25.....	12.25
	3. Expenses to Pittsburgh.....	14.30
	25. B. F. Hardesty.....	51.25
	30. Rine, for livery.....	39.50
August	9. Expenses to Independence.....	3.63
	10. I. L. Hardesty in full.....	62.96
	10. Expenses Chipley, setting stones.....	268.00
	11. Daily, on account of stone, 50.00: C. H. Sinclair, 100.00: H. H. Pendleton, 18.60	168.60
	11. Expenses for platforms, for latitude stations	36.56
	11. Capt. Chipley, *per diem*.....	207.20
	21. P. Daily, account of monuments.....	50.00
	9. Scott & Scott.....	3.65
June	22. Myers for board.....	1.50
	26. Scott & Foutz.....	10.00
August	11. H. H. Pendleton.....	50.25
Sept.	19. Bower & Co. livery.....	62.50
	10. Expenses to Harrisburg and Cannonsburg	28.35

Octo.	20. I. L. Hardesty	103.44
	28. I. L. Hardesty, 53.20; B. F. Hardesty, 33.40; Geo. P. Sargent, 23.10	109.70
	28. C. H. Sinclair, 24.50; Van Orden, 243.73.	485.23
November	7. McColloch, Pennsylvania Commissioner.	50.00
	14. Walters & Lhigget	7.75
	14. Merchandise	.80
	14. Livery	7.00
	14. Labor	5.25
	14. Board at W. Alexander	5.60
May	24. Board at Hill's	1.00
June	15. Axman	.25
1884.		
January	1. Ott Bros., hardware	2.20
August	29. Expenses to Hamilton	5.25
October	20. *Per diem*, F. L. Hoge	5.40
	20. Capt. Chipley, expenses 23.25; *per diem* 24.00	47.25
December	24. C. H. Van Orden	68.40
	24. Hartley for monuments	70.95
3078		
1884.		
December	31. McCulloch check	20.00
	31. Expense and telegrams	3.23
	31. Postage	3.50
	31. Stationery	1.50
1885.		
July	30. Jno. J. Chipley	45.00
November	20. Per diem John J. Chipley, thirty-five days at $6.00 per day	210.00
	20. Expenses	388.92
	16. C. H. Sinclair	150.00
September	19. Secretary of State	2.50
November	5. T. R. Kennedy	46.50
1886.		
January	28. F. L. Hoge per diem to date	180.00
	28. C. H. Sinclair	70.25
	29. Jno. J. Chipley, per diem to date	60.00
	29. Jos. C. Gist—per diem and expenses	40.00
	29. Railroad fare—Wheeling to Pittsburgh, Chipley, Hoge and Kennedy	10.00
	29. Expenses at Pittsburgh	11.00
	29. F. L. Hoge, two days' per diem	12.00
	29. Express on maps	.35
March	31. Pittsburgh and expenses	3.50
	31. Gist and Hoge to Ohio Pyle and telegram.	4.75
April	1. Express and fare from Ohio Pyle to Confluence	2.75
	1. Thomas, $1.75, Sinclair, $24.40	26.15
	1. Chipley, per diem and expenses	50.00
	1. Hotel and team, at Monu, Confluence, Pennsylvania	5.30

	1.	Monuments and setting same.....	9.12
	1.	Expenses to Wheeling	6.25
	3.	Col. Gist per diem and expenses.....	39.50
	3.	Board at Deam's.....	5.00
	4.	Per diem, F. L. Hoge, four days at $.6000	24.00
June	17.	Col. Gist, per diem and expenses.....	20.00
November	1.	Four days' office work.....	24.00
	1.	Express on plats	2.75
1883.		F. L. Hoge, as engineer from the 4th day of June, 1883, to the 26th June, 1883, twenty-two days at $4.00.....	88.00
			$5,280.10

State of West Virginia in Account with Pennsylvania and W. Va. Boundary Commission.

Total Amount Appropriated for the Pennsylvania and West Virginia Boundary.

		By account of March 10, 1879.....	$1,000.00
		Received March 4, 1881 (by warrant)..	1,000.00
3079			
1883.			
May	7.	By warrant	1,000.00
June	18.	Same	1,000.00
August	21.	Same	1,000.00
1885.			
October	24.	By warrant	1,250.00
			$5,250.00
		Interest on $1,000.00 two years two months at 3 per cent.....	65.00
		Interest on deposits	5.36
		Balance paid by Pennsylvania Commission	21.00
			$5,341.36

Total Expenditures.

Per diem and expenses of Commissioners	$1,707.45	
Engineers	1,223.13	
Assistants and expenses...	1,245.11	
Monuments	1,104.41	
Total amount appropriated.	.....	5,250.00
Interest	.....	70.36
By balance paid by Pennsylvania Commissioner..	.....	21.00
	5,280.10	5,341.36
1886.		
November 17. Balance due State.....	$61.26	
	5,341.36	5,341.36

Stone pile
North 160 ps
South 160 ps
Stake & mound

Hon. Henry S. Walker, Secretary of State.

SIR: The above account of expenditures by the Commission on Pennsylvania and West Virginia Boundary, I certify to as correct to the best of my knowledge and belief.

Respectfully yours,

F. L. HOGE,
Secretary of Joint Commission.

3080 MONROE EXHIBIT No. 37.

Jacob Thomas, 100 Acres, Preston C'ty.

Wyndham Robertson, Esquire, Governor of the Commonwealth of Virginia, to all to whom these presents shall come, Greeting:

Know ye, That in conformity with a survey made on the 23rd day of January, one thousand eight hundred and thirty three, by virtue of Land Office Exchange Treasury Warrant No. 2616, there is granted by the said Commonwealth unto Jacob Thomas a certain Tract or Parcel of Land, containing one hundred acres, situate in Preston County on a small drain running into Scrub glade run along & adjoining the Pennsylvania & Maryland lines bounded as follows. Beginning at a stone pile on the Pennsylvania line & supposed corner of the Maryland line & running thence with the Maryland line S. 160 poles to a stake and small spanish oak thence leaving said line and running W. 100 poles to a stone pile Thence N. 160 poles crossing a branch of scruby glade run to the Pennsylvania line & thence with said line E. 100 — to the Beginning with its appurtenances.

To have and to hold the said Tract or Parcel of Land, with its appurtenances, to the said Jacob Thomas and his heirs forever.

In witness whereof, The said Wyndham Robertson, Esquire, Governor of the Commonwealth of Virginia, hath hereunto set his hand and caused the Lesser Seal of the said Commonwealth to be affixed, at Richmond, on the 18th day of January, in the year of our Lord one thousand eight hundred and 37 and of the Commonwealth the 61st.

[SEAL.]

—— ——.

3081 STATE OF WEST VIRGINIA,
Auditor's Office, City of Charleston, To wit:

I, A. C. Scherr, Auditor of the State of West Virginia, do hereby certify that the foregoing is a true copy of a paper, purporting to be a grant from the State of Virginia to Jacob Thomas, dated the 18th day of January, 1837, on file in said Auditor's office, among the certified copies of records received from the office of the Register of the Land office, at Richmond, Virginia, and deposited in the said Auditor's Office, under Acts of the Legislature of West Virginia, passed February 24th, 1893, and February 20th, 1893.

Given under my hand and official seal, at Charleston, W. Va., this 20th day of July, 1906.

[SEAL.]

A. C. SCHERR, *Auditor.*

(Here follows map.)

3082 MONROE EXHIBIT No. 37.

JANUARY 23RD, 1833.

Surveyed for Jacob Thomas, assignee of Bucker Fairfax, who is assignee of Alexander King, who (in part) is assignee of David Holmes; 100 acres of land in Preston County, on part of a Land Office Exchange Treasury Warrant of 2179 acres, No. 2616, dated the 14th day of December 1831, entered the 18th of January, 1833, on a small glade running into Scrub Glade Run, and to lie along and adjoining the Pennsylvania and Maryland lines, and is bounded as followeth, to wit: Beginning on the Pennsylvania line and corner of the Maryland line, and running thence with the Maryland line South 160 poles to a stake and small Spanish oak; thence leaving said line and running thence West 100 poles to a stone pile; thence North 160 poles, Pennsylvania line; thence with said line East 100 poles to the beginning.

Platted by 40 poles to inch.

Magnetic Var. 1° 15′ West.

STATE OF WEST VIRGINIA,
County of Preston, To wit:

I, George A. Walls, Clerk of the County Court of said County do hereby certify that the foregoing is a true copy of a plat and entry made in Surveyor's Book No. 1 on page 49 one of the records of my said office, of a tract of 100 acres of land, surveyed for Jacob Thomas &c.

Given under my hand as Clerk of said Court, at Kingwood, West Va., this 8th day of October, 1906.

GEO. A. WALLS, *Clerk.*

3083 MONROE EXHIBIT No. 38.

John Floyd, Esquire, Governor of the Commonwealth of Virginia, to all to whom these presents shall come, Greeting:

Know ye, That in conformity with a survey made on the 23rd day of January, one thousand eight hundred and thirty three, by virtue of Land Office Exchange Treasury Warrant, No. 2616, issued December 14th 1831, there is granted by the said Commonwealth unto Horace Ludington a certain Tract or Parcel of Land containing one hundred and six acres situate in Preston County on Scrub Glade Run, E. Fork and bounded as followeth, to wit: Beginning at a stone, corner to Jacob Thomas survey of 100 acres and running thence with the second line of the same reversed E. 100 poles to a stake and small Spanish oak, thence S. 120 poles to a small black oak, thence W. 94 poles to a white oak, thence N. 65 W. 76- to three white oaks, thence N. 6 W. 27 poles to a black oak, thence N. 38 E. 66 poles to a white oak, thence N. 60 E. 28 poles to the place of beginning.

To have and to hold the said Tract or Parcel of Land, with its appurtenances, to the said Horace Ludington and his heirs forever.

In witness whereof, The said John Floyd, Esquire, Governor of the Commonwealth of Virginia, hath hereunto set his hand and caused the Lesser Seal of the said Commonwealth to be affixed, at Richmond, on the 29 day of November, in the year of our Lord one thousand eight hundred and 33 and of the Commonwealth the 58th.

[SEAL.] JOHN FLOYD.

3084 STATE OF WEST VIRGINIA,
Auditor's Office, City of Charleston, To wit:

I, A. C. Scherr, Auditor of the State of West Virginia, do hereby certify that the foregoing is a true copy of a paper, purporting to be a grant from the State of Virginia to Horace Ludington, dated the 29th day of November, 1833, on file in said Auditor's office among the certified copies of records received from the office of the Register of the Land office at Richmond, Virginia, and deposited in the said Auditor's Office, under Acts of the Legislature of West Virginia, passed February 24th, 1893, and February 20th, 1897.

Given under my hand and official seal, at Charleston, W. Va., this 4th day of October, 1906.

[SEAL.] A. C. SCHERR, *Auditor.*

3085 MONROE EXHIBIT No. 39.

Mr. Thomas Hammond, His Patent, "Hammonds' Corner," 169½ Acres.

THE STATE OF MARYLAND, &C.:

Know ye that whereas Thomas Hammond, of Frederick County, had surveyed and laid out for him a tract or parcel of land called "Hammond's Corner," lying in Allegany County, and containing one hundred and sixty-nine and one-half acres, by virtue of a Special Warrant for one hundred acres, obtained by him the fifth day of January, Eighteen hundred and thirty-nine, as appears; and he having fully compounded for said land according to law.

The State of Maryland, doth therefore hereby Grant unto him the said Thomas Hammond, the said tract or parcel of land called "Hammond's Corner," lying in Allegany County aforesaid.

Beginning at the South-West corner of Lot No. 2995, lying Westward of Fort Cumberland, it being at the end of the second line of said Lot, and running thence with the third line of each of Lots No. 2995, 2994, 2993, 2992, 2991, and with part of the third line of Lot No. 2927, North, five hundred and sixty-five perches to the Pennsylvania line; and with it West, forty-eight perches to the Fairfax line, commonly called the Virginia line; and with said line South, five hundred and sixty-five perches; then by a straight line to the beginning.

Containing one hundred and sixty-nine and one-half acres, according to the certificate of survey thereof, taken and returned into

the Western Shore Land Office bearing date the ninth day of January, Eighteen hundred and thirty-nine, and there remaining; together with all rights profits, benefits, and privileges thereunto belonging. To Have and to Hold the same unto him the said Thomas Hammond, his heirs and assigns forever.

Given under the Great Seal of the State of Maryland, this fifth day of September, Eighteen hundred and forty-two.

Witness: The Honorable Theodorick Bland, Esquire, Chancellor.

FRANCIS THOMAS. [THE GREAT SEAL.]

THEODORICK BLAND, *Ch'r.*

3086 LAND OFFICE OF MARYLAND, *set:*

I hereby certify that the aforegoing is a true Copy of the patent of "Hammond's Corner," 169½ acres, as recorded in Liber G. G. B. No. 3, folio 637, one of the record books of this office.

In testimony whereof, I have hereunto set my hand and affixed the Seal of the Land Office of Maryland, this fourth day of October, nineteen hundred and six.

[SEAL.]

E. STANLEY TOADVIN,
Commissioner of the Land Office.

(Endorsed:) Copy. Thomas Hammond, his patent "Hammond's Corner" 169½ A.

3087 MONROE EXHIBIT No. 40.

Charles Peale Polk and Raphael Peale, Their Patent, "The Granary," 331½ Acres.

THE STATE OF MARYLAND, &C.:

Know ye, that Whereas George French, on the twenty fifth day of April seventeen hundred and seventy had surveyed for him a tract of Land lying then in Frederick but now in Washington County called "The Granary," containing three hundred and thirty one acres and one half acre by virtue of so much part of a Special Warrant for four hundred and ninety acres and one half acre; granted him out of the late proprietary's Land Office, according to the conditions of Plantation the twelfth day of March seventeen hundred and seventy four as appears—

That the said George French, by an assignment dated the seventh day of October seventeen hundred and seventy four, made over all his right, Title, interest, property and estate of in and to the Certificate of the said Tract of land unto a certain Saint George Peale, his heirs and assigns forever, and the said Saint George Peale in like manner aforesaid, to wit, on the sixth day of June, seventeen hundred and seventy eight, made an assignment of all his right, title and interest of the same certificate unto his two nephews Charles Peale Polk and Raphael Peale and desired that Patent might be issued in their names for the said land, and the right of the Proprietary being now vested in the State of Maryland—

The said State Doth, hereby Grant unto him the said Charles Peale Polk and Raphael Peale, the aforesaid tract or parcel of land called *"The Granary"* lying in Washington County aforesaid.

Beginning at a bounded White Oak standing near a spring at the head of a hollow descending into the West side of Buffelow Run about four or five miles above the mouth of said run and about twenty or thirty perches South of a path that leads from Richard Hall's to the Meeting House on Sandy Creek Glades, and about a mile and a half Westwardly of said Hall's House, and running thence South thirty degrees East, forty perches; South twenty six degrees West forty three perches; South eighty degrees West, one hundred and ninety four perches; North, ninety four perches;
3088 North East, three hundred and fifty eight perches; South sixty one degrees East, eighty four perches; South twenty six degrees West, two hundred and sixty perches to the end of the first line of this survey, then with a straight line to the beginning.

Containing three hundred and thirty one and a half acres, according to the Certificate of Survey thereof, taken and returned into the Land Office, bearing date the twenty fifth day of April seventeen hundred and seventy four, and there remaining. Together with all rights, profits, benefits and privileges thereunto belonging; To Have and To Hold one undivided moiety or half part of the said tract of land unto him the said Charles Peale Polk his heirs and assigns forever. And To Have and To Hold the other undivided moiety or half part of the said tract of land unto him the said Raphael Peale his heirs and assigns forever.

Given under the Great Seal of the State of Maryland, this tenth day of January seventeen hundred and eighty eight.

Witness the Honorable John Rogers, Chancellor.

W. SMALLWOOD. [THE GREAT SEAL.] ROGERS, *Chan'r.*

LAND OFFICE OF MARYLAND, *set:*

I hereby certify that the aforegoing is a true copy of the Patent for "The Granary" 331½ acres, as recorded in Liber I. C. No. C. folio 316, one of the Record Books of this Office.

In testimony whereof, I have hereunto set my hand and affixed the Seal of the Land Office of Maryland this tenth day of October eighteen hundred and ninety six.

[SEAL.] WM. O. MITCHELL,
Commissioner of the Land Office.

(Endorsed:) Copy Patent "The Granary," 331½ Acres. Cost $1.30.

3089 MONROE EXHIBIT No. 41.

John Letcher, Esquire, Governor of the Commonwealth of Virginia, to all to whom these presents shall come, Greeting:

Know ye, That in conformity with a survey made on the 11th day of September, 1859, by virtue of Land Office Treasury Warrant No. 23,241, there is granted by the said Commonwealth unto Samuel

Boger, a certain tract or parcel of land containing eighty acres, lying in Preston County, adjoining the Maryland line, Abraham Thomas, Hagan & Scott, and John Fike and bounded as follows, viz: Beginning at a white oak corner to said Fike & Hagan & Scott and running with 7 of Fike's lines reversed S. 38 W. 66 poles to a black oak and stake, S. 6 E. 27 poles to three white oaks, S. 65 E. 70 poles to a white oak, E. 48 poles to a stake S. 9 E. 154 poles to a stone pile and pointers, E. 11 poles to a stone pile, N. 79 E. 8 poles to a stake in the Md. line, thence with the same N. 154 poles to a stake in Abraham Thomas' line, with two of his lines W. 66 poles to pointers, N. 120 poles to a stone pile corner to Hagan & Scott, with two of their lines reversed W. 38 poles to a stone pile and pointers, S. 60 W. 28 poles to the beginning with its appurtenances.

To have and to hold the said Tract or Parcel of Land, with its appurtenances, to the said Samuel Boger and his heirs forever.

In witness whereof, The said John Letcher, Esquire, Governor of the Commonwealth of Virginia, hath hereunto set his [SEAL.] hand and caused the Lesser Seal of the said Commonwealth to be affixed, at Richmond, on the 1st day of May in the year of our Lord one thousand eight hundred and 60 and of the Commonwealth the 84th.

JOHN LETCHER.

3090 STATE OF WEST VIRGINIA,
Auditor's Office, City of Charleston, To wit:

I, A. C. Scherr, Auditor of the State of West Virginia, do hereby certify that the foregoing is a true copy of a paper, purporting to be a grant from the State of Virginia, to Samuel Boger, dated the 1st day of May, 1860, on file in said Auditor's office among the certified copies of records received from the office of the Register of the Land office at Richmond, Virginia, and deposited in the said Auditor's Office, under Acts of the Legislature of West Virginia, passed February 24th, 1893, and February 20th, 1897.

Given under my hand and official seal at Charleston, W. Va., this 30th day of July, 1906.

[SEAL.] A. C. SCHERR, *Auditor.*

3091 MONROE EXHIBIT No. 42.

John Wiley, Esquire, Lieut. Governor of the Commonwealth of Virginia, to all to whom these presents shall come, Greeting:

Know ye, That in conformity with a survey made on the 3rd day of July, one thousand eight hundred and forty-seven by virtue of Land Office Treasury Warrant No. 16,577, there is granted by the said Commonwealth unto John Fike, a certain tract or parcel of land containing three hundred and eighty-eight acres, lying and being in the county of Preston on the waters of Sandy Creek adjoining lands of Dunham, Benjamin Shaw, Jacob A. Thomas & Martin and bounded as follows, viz: Beginning at a white oak corner to said Dunham and with three of his lines, S. 48 E. 71 poles to a white

oak, S. 27 W. 60 poles to a white oak, S. 77 E. 297 Poles to a stake corner to Wm. Robinson, with his line E. 100 poles to 2 pin oaks, N. 98 poles to a stone pile in said Shaw's line, with four of his lines S. 52 W. 15 poles to a white oak, S. 79 W. 88 poles to a stone pile, W. 11 poles to a stone heap and pointers, N. 9 W. 154 poles to a stake in said Thomas' line and with four of his lines W. 48 poles to a white oak, N. 65 W. 70 poles to three white oaks, N. 6 W. 27 poles to a black oak, N. 38 E. 66 poles to a white oak, N. 53 W. 34 poles to a stone pile corner to said Martin, with two of his lines S. 32½ W. 151 poles to a white oak, S. 62 W. 109 poles passing said Martin's beginning corner at the end of 76 poles to the beginning, with its appurtenances.

To have and to hold the said Tract or Parcel of Land, with its appurtenances, to the said John Fike and his heirs forever.

In witness whereof, The said John F. Wiley, Esquire, Lieut. Governor of the Commonwealth of Virginia, hath here-
[SEAL.] unto set his hand and caused the Lesser Seal of the said Commonwealth to be affixed, at Richmond, on the 30th day of June, in the year of our Lord one thousand eight hundred and 48 and of the Commonwealth the 72nd.

JOHN F. WILEY.

3092 STATE OF WEST VIRGINIA,
Auditor's Office, City of Charleston, To wit:

I, A. C. Scherr, Auditor of the State of West Virginia, do hereby certify that the foregoing is a true copy of a paper, purporting to be a grant from the State of Virginia to John Fike, dated the 30th day of June, 1848, on file in said Auditor's office among the certified copies of records received from the office of the Register of the Land office at Richmond, Virginia, and deposited in the said Auditor's Office, under Acts of the Legislature of West Virginia, passed February 24th, 1893, and February 20th, 1897.

Given under my hand and official seal, at Charleston, W. Va., this 30th day of July, 1906.

[SEAL.] A. C. SCHERR, *Auditor.*

3093 MONROE EXHIBIT No. 43.

William Smith, Esquire, Governor of the Commonwealth of Virginia, to all to whom these presents shall come, Greeting:

Know ye, That in conformity with a survey made on the 15th day of May, one thousand eight hundred and forty six, by virtue of Land Office Treasury Warrant, Nos. 2895, 15335 & 3067, there is granted by the said Commonwealth unto William Robinson a certain Tract or Parcel of Land containing five hundred and twenty-eight acres lying and being in the County of Preston on the waters of Little Sandy Creek adjoining lands of John Spurgen, Mrs. Muser Francis Hager, Sidney F. Dunham, David Vansickler & others and bounded as follows, viz: Beginning at a stone heap in a line of Jesse

Spurgen, thence with a line of the same and John Spurgen N. 44 E. 117 poles to pointers by the side of a drain N. 31½ E. with Spurgens line 93 poles to a W. oak, his corner N. 49½ W. 16 poles to a chestnut, corner to Nancy Musser with her line S. 75½ E. 43 poles to a white oak with another of her lines & *J. a cuppets* N. 40 E. 60 poles to a white oak, then with Cuppets line N. 50 W. 70 poles to a red oak a corner to Mary Cushman tract then with her line N. 50 E. 12 poles to a hickory, corner to F. Hager, then with his line S. 52 E. 43 poles to a stake, N. 67 E. 77 poles to 3 white oaks corner to Wm. Dunham with 2 of his lines S. 43 E. 92 poles to 2 maples standing in a drain S. 79 E. 208 poles to a stone pile S. 49 E. 56 poles to a spanish oak corner to Lewis Vansickle with his lines N. 78 W. 114 poles to a white oak & stone pile S. 20 W. 38 poles to a chestnut S. 7 E. 64 poles to a white oak near a drain S. 30 W. 134 poles to stone pile S. 10 W. 160 poles passing David Vansickles white oak corner at the end of 60 poles to a dead white oak in Mores *lane*, thence N. 40 W. 23½ poles to pointers and stone heap corner to Joseph *Jotter* S. 70 E. 50 poles to a chestnut N. 50 W. 176 poles to 2 chestnuts & stone heap N. 50 E. 126 poles to a white oak, N. 38 W. 178 poles to a maple S. 52½ W. 198 poles to the beginning with its appurtenances.

3094 To have and to hold the said Tract or Parcel of Land, with its appurtenances, to the said William Robinson and his heirs forever.

In witness whereof, The said William Smith, Esquire, Governor of the Commonwealth of Virginia, hath hereunto set his [SEAL.] hand and caused the Lesser Seal of the said Commonwealth to be affixed, at Richmond, on the 30th day of August in the year of our Lord one thousand eight hundred and 47 and of the Commonwealth the 72nd.

WM. SMITH.

3095 STATE OF WEST VIRGINIA,
Auditor's Office, City of Charleston, To wit:

I, A. C. Scherr, Auditor of the State of West Virginia, do hereby certify that the foregoing is a true copy of a paper, purporting to be a grant from the State of Virginia to William Robinson, dated the 30th day of August, 1847, on file in said Auditor's office among the certified copies of records received from the office of the Register of the Land office at Richmond, Virginia, and deposited in the said Auditor's Office, under Acts of the Legislature of West Virginia, passed February 24th, 1893, and February 20th, 1897.

Given under my hand and official seal, at Charleston, W. Va., this 4th day of October, 1906.

[SEAL.] A. C. SCHERR, *Auditor.*

3096 MONROE EXHIBIT No. 44.

William Smith, Esquire, Governor of the Commonwealth of Virginia, to all to whom these presents shall come, Greeting:

Know ye, That in conformity with a survey made on the 20th day of April, one thousand eight hundred and forty seven, by virtue of Land Office Treasury Warrant Nos. 3067, & 15892, there is granted by the said Commonwealth unto William Robinson a certain Tract or Parcel of Land containing one hundred acres lying and being in the County of Preston, adjoining Lewis Van Sickle, William Dunham, John Fike & others and bounded as follows, to wit: Beginning at a stone heap corner to said—Sickle & with his line reversed S. 5 poles to pointers E. 58 poles to a white oak N. 120 poles to 2 small pin oaks W. 100 poles to a stake, corner to John Fike with his line reversed N. 77 W. 52 poles to a stake, corner to Harden with his line S. 96 poles to a stake corner to said Robinsons other survey with his line S. 49 E. 56 poles to pointers corner to Lewis Sickle, with his line reversed E. 41 poles to the beginning with its appurtenances.

To have and to hold the said Tract or Parcel of Land, with its appurtenances, to the said William Robinson and his heirs forever.

In witness whereof, The said William Smith, Governor of the Commonwealth of Virginia, hath hereunto set his hand [SEAL.] and caused the Lesser Seal of the said Commonwealth to be affixed, at Richmond, on the 31 day of January in the year of our Lord one thousand eight hundred and 48 and of the Commonwealth the 72nd.

WM. SMITH.

3097 STATE OF WEST VIRGINIA.
Auditor's Office, City of Charleston, To wit:

I, A. C. Scherr, Auditor of the State of West Virginia, do hereby certify that the foregoing is a true copy of a paper, purporting to be a grant from the State of Virginia to William Robinson, dated the 31st day of January, 1848, on file in said Auditor's office among the certified copies of records received from the office of the Register of the Land office at Richmond, Virginia, and deposited in the said Auditor's Office, under Acts of the Legislature of West Virginia, passed February 24th, 1893, and February 20th, 1897.

Given under my hand and official seal, at Charleston, W. Va., this 4th day of October, 1906.

[SEAL.] A. C. SCHERR, *Auditor.*

3098 MONROE EXHIBIT No. 45.

David Campbell, Esquire, Governor of the Commonwealth of Virginia, to all to whom these presents shall come, Greeting:

Know ye, That in conformity with a survey made on the 15th day of November, one thousand eight hundred and thirty-five, by virtue of Land Office Treasury Warrant No. 11,182, there is granted

by the said Commonwealth unto John Summmers, a certain Tract or Parcel of Land containing two hundred acres situate in Preston County, on the N. end of the Big Pine Swamp adjoining Elliott & Co.'s survey of 520 acres on the south and Charles Martin's survey on the north, bounded as follows: Beginning at a sugar tree corner to Charles Martin's survey thence with his line W. 320 poles to a white oak, his corner and in a line of William Gabel's survey of 500 acres, thence with the line of the same reversed N. 60 E. 78 poles to the line of the survey made for Elliott & Co., thence with three lines of the same S. 85 E. 187 poles to pointers, thence N. 10 W. 20 poles to pointers, thence N. 76 E. 200 poles to a stake in the swamp, thence leaving said survey S. 200 poles to a stake, then West 120 poles to Martin's survey, thence with the line of the same N. 100 poles to the beginning, with its appurtenances.

To have and to hold the said Tract or Parcel of Land, with its appurtenances, to the said John Summers and his heirs forever.

In witness whereof, The said David Campbell, Esquire, Governor of the Commonwealth of Virginia, hath hereunto set his [SEAL.] hand, and caused the Lesser Seal of the said Commonwealth to be affixed, at Richmond, on the 21st day of October in the year of our Lord one thousand eight hundred and thirty-seven and of the Commonwealth the 62nd.

DAVID CAMPBELL.

3099 STATE OF WEST VIRGINIA,
Auditor's Office, City of Charleston, To wit:

I, A. C. Scherr, Auditor of the State of West Virginia, do hereby certify that the foregoing is a true copy of a paper, purporting to be a grant from the State of Virginia to John Summers, dated the 21st day of October, 1837, on file in said Auditor's office among the certified copies of records received from the office of the Register of the Land office at Richmond, Virginia, and deposited in the said Auditor's Office under Acts of the Legislature of West Virginia, passed February 24th, 1893, and February 20th, 1897.

Given under my hand and official seal, at Charleston, W. Va., this 30th day of July, 1906.

[SEAL.] A. C. SCHERR, *Auditor.*

3100 MONROE EXHIBIT No. 46.

James Pleasants, Jr., Esquire, Governor of the Commonwealth of Virginia, to all to whom these presents shall come, Greeting:

Know ye, That in conformity with a survey made on the 16th day of January one thousand eight hundred and twenty-four by virtue of Land Office Treasury Warrant No. 7158 issued December 7th, 1821, there is granted by the said Commonwealth unto William Gabel a certain tract or parcel of land containing five hundred acres situate in the county of Preston on the waters of Muddy Creek, on the west side of the Pine Swamp and adjoining the lands of Lowry on the east and extending eastwardly and including the Pine Swamp

Knob and McClain's sugar camp and bounded as followeth, to-wit: Beginning at a white oak near Lowry's line and 30 poles W. of the lime stone rock, thence N. 25 E. 82 poles to a white oak, N. 65 E. 66 poles to a chestnut and sugar tree in Jacob Wolf's line on the west side of Pine Swamp Knob and thence with his line N. 80 E. 125 poles to pointers corner to Wolf's land, N. 14 E. 57 poles to pointers above Cup's field, thence N. 80 E. 160 poles to a maple on the bank of Salt Block Run, thence S. 50 E. 66 poles to a sugar tree, thence S. 13 W. 144 poles to a sugar tree, thence S. 60 W. 278 poles to a red oak on the south side of the road to the Pine Swamp, thence N. 60 W. 62 poles to pointers, thence N. 85 W. 56 poles to two spruce pines and thence N. 42 W. 80 poles to the beginning.

To have and to hold the said Tract or Parcel of Land, with its appurtenances, to the said William Gabel and his heirs forever.

In witness whereof, The said James Pleasants, Jr., Esquire, Governor of the Commonwealth of Virginia, hath hereunto [SEAL.] set his hand and caused the Lesser Seal of the said Commonwealth to be affixed, at Richmond, on the 8th day of September in the year of our Lord one thousand eight hundred and 24 and of the Commonwealth the 49th.

JAMES PLEASANTS, JR.

3101 STATE OF WEST VIRGINIA,

Auditor's Office, City of Charleston, To wit:

I, A. C. Scherr, Auditor of the State of West Virginia, do hereby certify that the foregoing is a true copy of a paper, purporting to be a grant from the State of Virginia to William Gabel, dated the 8th day of September, 1824, on file in said Auditor's office among the certified copies of records received from the office of the Register of the Land office at Richmond, Virginia, and deposited in the said Auditor's office, under Acts of the Legislature of West Virginia, passed February 24th, 1893, and February 20th, 1897.

Given under my hand and official seal, at Charleston, W. Va., this 28th day of July, 1906.

[SEAL.] A. C. SCHERR, *Auditor.*

3102 MONROE EXHIBIT No. 47.

John Tyler, Esquire, Governor of the Commonwealth of Virginia, to all to whom these presents shall come, Greeting:

Know ye, That in conformity with a survey made on the 15th day of January, one thousand eight hundred and twenty-four, by virtue of Land Office Treasury Warrants 100 acres by Nos. 6712, issued October 11th, 1819, 200 acres by No. 7405 issued February 14th, 1823, 100 acres by No. 7037, issued February 23rd 1821, and 120 acres by No. 7158 issued December 7th, 1821, there is granted by the said Commonwealth unto Abraham Jeffers, William Elliott, John Tremley and Henry Line, a certain tract or parcel of land containing five hundred and twenty acres situate in the county of Preston on the waters of Pine Swamp, Muddy Creek, including the improve-

ments of Henry Line and bounded as followeth, to-wit: Beginning at two white oaks at the N. E. side of the Pine Swamp and south of John Lewis' barn thence N. 14 W. 214 poles to a chestnut and maple, thence S. 80 W. 270 poles to a white oak, passing by the big spring on the right, thence S. 21 poles to a sugar tree corner to William Gabel's 500 acre survey, thence with two lines of the same S. 13 W. 144 poles to a sugar tree, thence N. 60 W. 180 poles to a stone, thence S. 85 E. 187 poles to a pointers, thence N. 10 W. 20 poles to pointers and thence N. 76 E. 340 poles through the North end of the Pine Swamp to the beginning.

To have and to hold the said Tract or Parcel of Land, with its appurtenances, to the said Abraham Jeffers, Wm. Elliott, John Tremly, and Henry Line and their heirs forever.

In witness whereof, The said John Tyler, Esquire, Governor of the Commonwealth of Virginia, hath hereunto set his hand and caused the Lesser Seal of the said Commonwealth to be affixed at Richmond, on the 20th day of June, in the year of our Lord one thousand eight hundred and 26 and of the Commonwealth the 50th.

[SEAL.] JOHN TYLER.

3103 STATE OF WEST VIRGINIA,

Auditor's Office, City of Charleston, To wit:

I, A. C. Scherr, Auditor of the State of West Virginia, do hereby certify that the foregoing is a true copy of a paper, purporting to be a grant from the State of Virginia to Abraham Jeffers and others, dated the 20th day of June, 1826, on file in said Auditor's office among the certified copies of records received from the office of the Register of the Land office at Richmond, Virginia, and deposited in the said Auditor's Office, under Acts of the Legislature of West Virginia, passed February 24th, 1893, and February 20th, 1897.

Given under my hand and official seal, at Charleston, W. Va., this 28th day of July, 1906.

[SEAL.] A. C. SCHERR, *Auditor.*

3104 MONROE EXHIBIT No. 48.

Wyndham Robertson, Esquire, Governor of the Commonwealth of Virginia, to all to whom these presents shall come, Greeting:

Know ye, That in conformity with a survey made on the 18th day of June one thousand eight hundred and thirty-four, by virtue of Land Office Treasury Warrant No. 11,185, there is granted by the said Commonwealth unto John & Calvin Crane, a certain tract or parcel of land containing three hundred and forty-six acres, situate in Preston County on the Salt Block Run, a branch of Yohogania River, adjoining a survey of 520 acres made for William Elliott & Co. at the Pine Swamps on the north side and bounded as follows: Beginning at a white oak on the north side of Salt Block Run south of Samuel Wilhelm's house and running thence N. 25 W. 99 poles to a birch, thence N. 85 W. 122 poles to a white oak, then N. 29 W. 36 poles to a white oak near a drain, thence crossing the same S. 80

W. 130 poles to a spruce pine, thence crossing Salt Block Run S. 39, W. 184 poles to a red oak in the north line of a survey made for Wm. Elliott & Co., thence with two lines of the same reversed N. 80 E. 254 poles to a maple, thence S. 14 E. 168 poles to a sugar tree; then leaving said survey N. 56 E. 142 poles to a stake, thence N. 70 poles to the beginning, with its appurtenances.

To have and to hold the said Tract or Parcel of Land, with its appurtenances, to the said John & Calvin Crane and their heirs forever.

In witness whereof, The said Wyndham Robertson, Esquire, Governor of the Commonwealth of Virginia, hath hereunto set his hand and caused the Lesser Seal of the said Commonwealth to be affixed at Richmond, on the 31st day of August in the year of our Lord one thousand eight hundred and 36 and of the Commonwealth the 61st.

[SEAL.] WYNDHAM ROBERTSON.

3105 STATE OF WEST VIRGINIA,
Auditor's Office, City of Charleston, To wit:

I, A. C. Scherr, Auditor of the State of West Virginia, do hereby certify that the foregoing is a true copy of a paper, purporting to be a grant from the State of Virginia to John & Calvin Crane, dated the 31st day of August, 1836, on file in said Auditor's office among the certified copies of records received from the office of the Register of the Land Office at Richmond, Virginia, and deposited in the said Auditor's Office, under Acts of the Legislature of West Virginia, passed February 24th, 1893, and February 20th, 1897.

Given under my hand and official seal, at Charleston, W. Va., this 30th day of July, 1906.

[SEAL.] A. C. SCHERR, *Auditor.*

3106 MONROE EXHIBIT NO. 49.

John B. Floyd, Esquire, Governor of the Commonwealth of Virginia, to all to whom these presents shall come, Greeting:

Know ye, That in conformity with a survey made on the 1st day of March one thousand eight hundred and forty-nine, by virtue of Land Office Treasury Warrant No. 17,544 there is granted by the said Commonwealth unto Samuel Boger, a certain tract or parcel of land containing two hundred and fifty acres, lying and being in the county of Preston, on the waters of Sandy Creek, adjoining lands of Richard Glover, Lewis Prichard Luddington Rodehaver & Harden and bounded as follows: Beginning at a stone and pointeres a croner to said Glover thence reversing his last line N. 85 W. 120 poles to a chestnut his corner and in a line of L-dington 286 acre survey, with three lines of the same S. 68 poles to a chestnut oak, S. 89 W. 62 poles to a chestnut oak, N. 70 W. 55 poles to a white oak, thence leaving Luddington's line and running S. 32½ W. 74 poles crossing a run, thence S. 57 E. 29 poles to two chestnuts corner to Edward Harden with four of his lines N. 55 E. 46 poles to a black oak, S. 87 E. 80 poles to a white oak, S. 22 E. 64 poles to a W. oak, S. 5 W.

122 poles to a white oak S. 7 W. 100 poles to pointers corner to Rodehaver, S. 55 E. 100 poles to pointers corner to Lewis Prichard, with five of his lines N. 11 E. 147 poles to pointers, N. 41 W. 40 poles to pointers, N. 7 W. 30 poles to pointers, N. 39 E. 82 poles to pointers, N. 20 poles to a stake, N. 47 W. 98 poles with said Lewis' line to pointers, N. 31 W. 40 poles to pointers N. 24 E. 80 poles N. 68 E. 60 poles to the beginning, with its appurtenances.

To have and to hold the said Tract or Parcel of Land, with its appurtenances, to the said Samuel Boger and his heirs forever.

In witness whereof, The said John B. Floyd, Esquire, Governor of the Commonwealth of Virginia, hath hereunto [SEAL.] set his hand and caused the Lesser Seal of the said Commonwealth to be affixed at Richmond, on the 31st day of December in the year of our Lord one thousand eight hundred and 49 and of the commonwealth the 74th.

JOHN B. FLOYD.

3107 STATE OF WEST VIRGINIA,
Auditor's Office, City of Charleston, To wit:

I, A. C. Scherr, Auditor of the State of West Virginia, do hereby certify that the foregoing is a true copy of a paper, purporting to be a grant from the State of Virginia to Samuel Boger, dated the 31st day of December, 1849, on file in said Auditor's office among the certified copies of records received from the office of the Register of the Land Office at Richmond, Virginia, and deposited in the said Auditor's Office, under Acts of the Legislature of West Virginia, passed February 24th, 1893, and February 20th 1897.

Given under my hand and official seal, at Charleston, W. Va., this 30th day of July, 1906.

[SEAL.] A. C. SCHERR, *Auditor.*

(Here follows map.)

RUBBER PAGES

3108 MONROE EXHIBIT No. 50.

OCTOBER 12TH, 1848.

Surveyed for Jacob Guseman.

750 acres of Land in Preston County, on part of Land Office Treasury Warrant of 964 acres, No. 17301, dated the 5th day of September 1848, entered the 1st day of October 1848, on the waters of Muddy Creek and Snowy Creek, adjoining lands of Parsons, John H. Ladd & Albright, Elihu Gregg and others, and bounded as follows: Beginning at a white oak in a line of said Parsons; thence N. 19½ E. 364 poles to a maple tree; thence N. 80° West 178 poles to a red oak stump and pointers in a line of said Gregg; with the same reversed S. 57° W. 10 poles to a white oak, his corner; thence reversing the 1st line of said Gregg survey Patented to William Ashby, South 88° W. 150 poles to a stone heap and pointers in the closing line of a survey of 400 acres, made for Nimrod Gregg; thence with four lines of the same reversed S. 19° E. 107 poles to pointers; S. 28° W. 155 poles to a chestnut; S. 18° W. 144 poles to a sugar tree, Gregg's corner; thence S. 60° W. 9 poles to a small white oak; thence leaving Gregg's line and running with Ladd's line S. 7° W. 43 poles to a chestnut and W. O.; thence S. 75° East 40 poles to pointers; thence N. 80° E. 228 poles with said Ladd and one line of said Parsons survey to pointers, corner to said Parsons; thence N. 54 E. 57 poles to pointers, his corner; then East 7 poles to the beginning.

Scale 100 poles per inch.

Magnetic Var. 1° 30′ West.

R. MORRIS, *S. P. C.*

3109 STATE OF WEST VIRGINIA,
County of Preston, To wit:

I. Geo. A. Walls, Clerk of the County Court of said County do hereby certify that the foregoing is a true and accurate copy of foregoing plat and survey as found in Surveyor's Book No. 2 Page 17. one of the records of my said office.

Given under my hand as Clerk of said Court, on the 8th day of October, 1906.

GEO. A. WALLS, *Clerk.*

3110 MONROE EXHIBIT No. 51.

Henry A. Wise, Esquire, Governor of the Commonwealth of Virginia, to all to whom these presents shall come, Greeting:

Know ye, That in conformity with a survey made on the 25th day of November one thousand eight hundred and fifty-five, by virtue of Land Office Treasury Warrant No. 23,133, there is granted by the said Commonwealth unto Thomas Brown, a certain tract or parcel of Land containing 490 acres, lying in Preston County, adjoining lands of Daniel Parsons, Jacob Gooseman, John T. Morris and line

of the John Hays and Horner Martin of 3600 acres and bounded as follows, viz: Beginning at a fallen white oak in a line of David Parsons and corner to said Gooseman and with two lines of said Parsons N. 88 E. 71 poles to white oak, S. 10 E. 114 poles to white oak, S. 47 E. 26 poles to a white oak N. 72 E. 82 poles to a white oak, S. 25 E. 66 poles to a maple, S. 79 E 20 poles to a stake in a line of John Hoye and Martin survey, with the same reversed N. 470 poles to pointers corner to John T. Morris's survey with a line of the same W. 100 poles to a stone and pointers corner to George Smith, with his line N. 77 W. 35 poles to the line with the same S. 19 W. 330 poles to the beginning with its appurtenances.

To have and to hold the said Tra . or Parcel of Land, with its appurtenances, to the said Thomas Brown and his heirs forever.

In witness whereof, The said Henry A. Wise, Esquire, Governor of the Commonwealth of Virginia, hath hereunto set his hand and caused the Lesser Seal of the said Commonwealth to be affixed at Richmond, this 1st day of July in the year of our Lord one thousand eight hundred and 56 and of the Commonwealth the 80th.

[SEAL.] HENRY A. WISE.

3111 STATE OF WEST VIRGINIA.

Auditor's Office, City of Charleston, To wit:

I, A. C. Scherr, Auditor of the State of West Virginia, do hereby certify that the foregoing is a true copy of a paper, purporting to be a grant from the State of Virginia to Thomas Brown, dated the 1st day of July, 1856, on file in said Auditor's office among the certified copies of records received from the office of the Register of the Land office at Richmond, Virginia, and deposited in the said Auditor's Office, under Acts of the Legislature of West Virginia, passed February 24th, 1893, and February 20th, 1897.

Given under my hand and official seal, at Charleston, W. Va., this 28th day of July, 1906.

[SEAL.] A. C. SCHERR, *Auditor.*

3112 MONROE EXHIBIT No. 52.

Henry A. Wise, Esquire, Governor of the Commonwealth of Virginia, to all to whom these presents shall come, Greeting:

Know ye, That in conformity with a Survey made on the tenth day of March, one thousand eight hundred and fifty-eight by virtue of Land Office Treasury Warrants Nos. 23,137 & 23,134 there is granted by the said Commonwealth, unto Jacob Crane a certain Tract or Parcel of Land, containing Five hundred and fourteen acres, lying in Preston County on the waters of Snowy Glade Creek, adjoining the following surveys: Frances & Wm. Deakins 6000 acres, the Levi Beaty survey, Henry Hawks survey, John Hoye survey, George Ashby's 50 acre tract and 2 surveys of Isaac Vanmeter, and bounded as follows, viz:

Beginning at a dead white oak standing in George Ashby's line 13 poles from his chestnut corner; thence reversing seven lines of said Deakins 6000 acre survey, N. 63° E. 206 poles to pointers, N. 85° E. 91 poles to a locust & pointers, North 40 poles to pointers, N. 30° E. 36 ps. crossing the creek to a stone pile N. 80° E. 90 poles to a white oak by a small drain, N. 24° W. 371 ps. to pointers, North 114 poles to a white oak; then leaving said 6000 acres, and running N. 20° W. 25 poles to a white oak; a corner to said Beaty's survey, with a line of the same S. 10° W. 34 ps. to a chestnut & pointers a corner to said Hawks' survey, with two lines of the same, S. 2° W. 210 poles to pointers S. 74 W. 103 poles to the corner of John Hays' survey, with a line of the same, S. 5° W. 66 ps. to a chestnut, corner to said Vanmeter, with three of his lines S. 8° E. 181 poles to a red oak, S. 36° W. 112 ps. to a corner of said Vanmeters' 400 acres, with a line of the same, S. 85 W. 110 poles to the line of said Ashby's survey, with the same S. 42° E. 70 poles to the beginning, with its appurtenances.

To have and to hold the said tract or parcel of Land, with its appurtenances, to the said Jacob Crane and his heirs forever.

3113 In witness whereof, The said Henry A. Wise, Esquire, Governor of the Commonwealth of Virginia, hath hereunto set his hand and caused the Lesser Seal of the said Com-
[SEAL.] monwealth to be affixed at Richmond, on the first day of January in the year of our Lord one thousand eight hundred and fifty nine and of the Commonwealth *of* the eighty third.

Copy.

HENRY A. WISE.

Jacob Crane hath title to the within grant.

Copy.

S. H. PARKER,
Reg. L. Office.

Jacob Crane, 514 acres, Preston Co.
Book 115, Page 702.

3114 STATE OF WEST VIRGINIA,
County of Preston, To-wit:

The foregoing is a correct copy of a Patent from Virginia to Jacob Crane, filed before me with the depositions of Julius K. Monroe, in the case of State of Maryland *vs.* State of West Virginia, Marked Monroe Exhibit No. 52.

[SEAL.] ROBERT W. MONROE,
Notary Public of Preston County, West Virginia.

3115 MONROE EXHIBIT No. 53.

Patrick Henry, Esquire, Governor of the Commonwealth of Virginia, to all to whom these presents shall come, Greeting:

Know ye, That by virtue of a certificate in right of settlement given by the Commissioners for adjusting the titles to unpatented

lands in the District of Monongalia, Yohogania & Ohio & in consideration of the ancient composition of two pounds sterling paid by Isaac Vanmeter into the Treasury of this Commonwealth, there is granted by the said Commonwealth unto the said Isaac Vanmeter assee. of Peter Hoff a certain tract or parcel of land containing 400 acres, by survey bearing date the 30th day of July, 1784, lying & being in the County of Monongalia on the waters of Yohogania river including his settlement made in the year 1774 & bounded as followeth, to wit: Beginning at a white oak & running S. 69° E. 108 poles to a white oak S. 30° E. 235 poles crossing a creek to a white oak S. 36° W. 62 poles to a red oak S. 85° W. 143 poles to a white oak N. 60° W. 80 poles to a chestnut N. 8° E. 40 poles to a white — N. 30° W. 120 poles to a red oak N. 100 poles to a white oak N. 49° E. 96 poles to the beginning with its appurtenances.

To have and to hold the said Tract or Parcel of Land, with its appurtenances, to the said Isaac Vanmeter and his heirs forever.

In witness whereof, The said Patrick Henry, Esquire, Governor of the Commonwealth of Virginia, hath hereunto set his [SEAL.] hand and caused the Lesser Seal of the said Commonwealth to be affixed at Richmond, on the 21st day of November in the year of our Lord one thousand seven hundred and 86 and of the Commonwealth the 11th.

P. HENRY.

3116 STATE OF WEST VIRGINIA,
Auditor's Office, City of Charleston, To wit:

I, A. C. Scherr, Auditor of the State of West Virginia, do hereby certify that the foregoing is a true copy of a paper, purporting to be a grant from the State of Virginia to Isaac Vanmeter, dated the 21st day of November, 1786, on file in said Auditor's office among the certified copies of records received from the office of the Register of the Land office at Richmond, Virginia, and deposited in the said Auditor's Office, under Acts of the Legislature of West Virginia, passed February 24th, 1893, and February 20th, 1897.

Given under my hand and official seal, at Charleston, W. Va., this 30th day of July, 1906.

[SEAL.] A. C. SCHERR, *Auditor.*

3117 MONROE EXHIBIT No. 54.

Patrick Henry, Esquire, Governor of the Commonwealth of Virginia, to all to whom these presents shall come, Greeting:

Know ye, That by virtue & in consideration of part of Land Office Treasury Warrant No. 16656 issued the 30th day of May, 1783, there is granted by the said Commonwealth unto Isaac Vanmeter a certain tract or parcel of land containing 156 acres by survey bearing date the 26th day of April, 1785, lying & being in the County of Monongalia on Snowy Glade Creek, & bounded as followeth, to wit: Beginning at a white oak standing on the N. side of Snowy Glade creek running thence S. 80° W. 30 poles to a white

oak, thence S. 45° W. 160 poles to a white oak, thence N. 82° W. 40 poles to a chestnut, thence N. 20° W. 160 poles to a red oak, thence N. 78° E. 215 poles to a white oak, thence S. 9° E. 60 poles to the beginning with its appurtenances.

To have and to hold the said Tract or Parcel of Land, with its appurtenances, to the said Isaac Vanmeter and his heirs forever.

In witness whereof, The said Patrick Henry, Esquire, Governor of the Commonwealth of Virginia, hath hereunto set his [SEAL.] hand and caused the Lesser Seal of the said Commonwealth to be affixed, at Richmond, on the 10th day of October, in the year of our Lord one thousand seven hundred and 86 and of the Commonwealth the 11th.

P. HENRY.

3118 STATE OF WEST VIRGINIA,
Auditor's Office, City of Charleston, To wit:

I, A. C. Scherr, Auditor of the State of West Virginia, do hereby certify that the foregoing is a true copy of a paper, purporting to be a grant from the State of Virginia to Isaac Vanmeter, dated the 10th day of October, 1786, on file in said Auditor's office among the certified copies of records received from the office of the Register of the Land Office at Richmond, Virginia, and deposited in the said Auditor's Office, under Acts of the Legislature of West Virginia, passed February 24th, 1893, and February 20th, 1897.

Given under my hand and official seal, at Charleston, W. Va., this 4th day of October, 1906.

[SEAL.] A. C. SCHERR, *Auditor.*

3119 MONROE EXHIBIT No. 55.

Wyndham Robertson, Esquire, Governor of the Commonwealth of Virginia, to all to whom these presents shall come, Greeting:

Know ye, That in conformity with a survey made on the 13th day of May, one thousand eight hundred and thirty-three, by virtue of Land Office Treasury Warrant No. 10,855, there is granted by the said Commonwealth unto John Rodehaver, a certain tract or parcel of land containing two hundred and ninety-seven acres situate in Preston County, on the white oak spring run, on the Burchinal road including Groves' sugar camp and bounded as follows: Beginning at a white oak, on the East side and near the Burchinal road and south of the white oak spring run where it crosses the road and running thence S. 34 E. 130 poles crossing the road to a white oak, thence N. 60 E. 99 poles crossing the road again and a branch of snowy glade creek to two chestnut oaks on the side of Snaggy mountain, thence N. 42 poles to a red oak; thence N. 42 E. 110 poles to a stone pile on a bold hill side, thence N. 20 W. 98 poles to a chestnut, thence N. 23 E. 63 poles to a small white oak and ash, thence N. 47 E. 52 poles to a red oak, thence N. 30 W. 55 poles to a spruce pine, near the edge of a Laurel Swamp, thence S. 47 W. 59 poles to a double spruce pine passing near and west of Groves' sugar camp,

thence N. 60 W. 30 poles to a white oak near a small drain on the west side of the white oak spring run, thence S. 30 W. 320 poles to the place of beginning, with its appurtenances.

To have and to hold the said Tract or Parcel of Land, with its appurtenances to the said John Rodehaver and his heirs forever.

In witness whereof, The said Wyndham Robertson, Esquire, Governor of the Commonwealth of Virginia, hath hereunto [SEAL.] set his hand and caused the Lesser Seal of the said Commonwealth to be affixed at Richmond, on the 31st day of August in the year of our Lord one thousand eight hundred and 36 and of the Commonwealth the 61st.

WYNDHAM ROBERTSON.

3120 STATE OF WEST VIRGINIA,
Auditor's Office, City of Charleston, To wit:

I, A. C. Scherr, Auditor of the State of West Virginia, do hereby certify that the foregoing is a true copy of a paper, purporting to be a grant from the State of Virginia to John Rodehaver, dated the 31st day of August, 1836, on file in said Auditor's office among the certified copies of records received from the office of the Register of the Land office at Richmond, Virginia, and deposited in the said Auditor's Office, under Acts of the Legislature of West Virginia, passed February 24th, 1893, and February 20th, 1897.

Given under my hand and official seal, at Charleston, W. Va., this 30th day of July, 1906.

[SEAL.] A. C. SCHERR, *Auditor.*

3121 MONROE EXHIBIT No. 56.

Benjamin Harrison, Esquire, Governor of the Commonwealth of Virginia, to all to whom these presents shall come, Greeting:

Know ye, That by virtue of a certificate in right of settlement given by the commissioner for adjusting the titles to unpatented lands in district of Monongalia, Yohogania & Ohio, & in consideration of the ancient composition of two pounds Sterling paid by Jesse Ashby into the treasury of this commonwealth, there is granted by the said Commonwealth unto the said Jesse Ashby, a certain tract or parcel of land containing four hundred acres, by survey bearing date the 12th day of June 1781, lying and being in the County of Monongalia on both sides of Snows Glady Creek, a branch of the Yohogania river & bounded as followeth, to wit: Beginning at a cherry tree on the N. side of the Creek, running thence East 116 poles to pointers S. 308 poles to two cherry trees on the creek S. 16½° W. 83 poles to a burch W. 220 poles to a white oak N. 20° E. 408 poles crossing the creek to the beginning with its appurtenances.

To have and to hold the said Tract or Parcel of Land, with its appurtenances, to the said Jesse Ashby and his heirs forever.

In witness whereof, The said Benjamin Harrison, Esquire, Gov-

ernor of the Commonwealth of Virginia, hath hereunto
[SEAL.] set his hand and caused the Lesser Seal of the said Commonwealth to be affixed at Richmond, on the 18th day of March, in the year of our Lord one thousand 7 hundred and 84, and of the Commonwealth the 8th.

BENJAMIN HARRISON.

3122 STATE OF WEST VIRGINIA.

Auditor's Office, City of Charleston, To wit:

I, A. C. Scherr, Auditor of the State of West Virginia, do hereby certify that the foregoing is a true copy of a paper, purporting to be a grant from the State of Virginia to Jesse Ashby, dated the 18th day of March, 1784, on file in said Auditor's office among the certified copies of records received from the office of the Register of the land office at Richmond, Virginia, and deposited in the said Auditor's Office, under Acts of the Legislature of West Virginia, passed February 24th, 1893, and February 20th, 1897.

Given under my hand and official seal, at Charleston, W. Va., this 30th day of July, 1906.

[SEAL.] A. C. SCHERR, *Auditor.*

3123 MONROE EXHIBIT No. 57.

Patrick Henry, Esquire, Governor of the Commonwealth of Virginia, to all to whom these presents shall come, Greeting:

Know ye, That by virtue and in consideration of (part) a Land Office Treasury Warrant No. 15295 and issued 2nd April 1783, there is granted by the said Commonwealth unto Francis & Wm. Deakins, assee. of Michael Ryan, a certain tract or parcel of land containing 908 acres by survey bearing date 30th July 1784 lying and being in Monongalia County on the waters of Snowy Glade Creek to the Southward of lands claimed by Lesse Ashby and bounded as followeth, to wit: Beginning at a white oak thence N. 240 poles to a red oak E. 480 poles to a sugar tree S. 320 poles to a red oak N. 80° W. 492 poles to the beginning with its appurtenances.

To have and to hold the said Tract or Parcel of Land, with its appurtenances, to the said Francis & Wm. Deakins and their heirs forever.

In witness whereof, The said Patrick Henry, Esquire, Governor of the Commonwealth of Virginia, hath hereunto
[SEAL.] set his hand and caused the Lesser Seal of the said Commonwealth to be affixed at Richmond, on the 2d day of December in the year of our Lord one thousand seven hundred and eighty five and of the Commonwealth the tenth.

P. HENRY.

3124 STATE OF WEST VIRGINIA.
Auditor's Office, City of Charleston, To wit:

I, A. C. Scherr, Auditor of the State of West Virginia, do hereby certify that the foregoing is a true copy of a paper, purporting to be a grant from the State of Virginia to Francis & Wm. Deakins, dated the 2nd day of December, 1785, on file in said Auditor's office among the certified copies of records received from the office of the Register of the land office at Richmond, Virginia, and deposited in the said Auditor's Office, under Acts of the Legislature of West Virginia, passed February 24th, 1893, and February 20th, 1897.

Given under my hand and official seal, at Charleston, W. Va., this 30th day of July, 1906.

[SEAL.] A. C. SCHERR, *Auditor.*

3125 MONROE EXHIBIT No. 58.

Patrick Henry, Esquire, Governor of the Commonwealth of Virginia, to all to whom these presents shall come, Greeting:

Know ye, That by virtue and in consideration of a Land Office Treasury Warrant No. 15579 and issued the 3rd May 1784 lying and being in Monongalia County, on the waters of Snowy Glade Creek, S'ward of lines claimed by Jesse Hasshbuy, there is granted by the said Commonwealth unto Francis & Wm. Deakins a certain tract or parcel of land containing 354 acres by survey bearing date 30th April and bounded as followeth, to wit: Beginning at a sugar tree running N. 80 poles to a maple N. 81° W. 484 poles to a white oak S. 154 poles to a red oak E. 480 poles to the beginning with its appurtenances.

To have and to hold the said Tract or Parcel of Land, with its appurtenances, to the said Francis & Wm. Deakins and *his* heirs forever.

In testimony whereof, The said Patrick Henry, Esquire, Governor of the Commonwealth of Virginia, hath hereunto [SEAL.] set his hand and caused the Lesser Seal of the said Commonwealth to be affixed at Richmond, on the 2nd day of December, in the year of our Lord one thousand seven hundred and eighty five, and of the Commonwealth the tenth.

P. HENRY.

3126 STATE OF WEST VIRGINIA.
Auditor's Office, City of Charleston, To wit:

I, A. C. Scherr, Auditor of the State of West Virginia, do hereby certify that the foregoing is a true copy of a paper, purporting to be a grant from the State of Virginia to Francis & Wm. Deakins, dated the 2nd day of December, 1785, on file in said Auditor's office among the certified copies of records received from the office of the Register of the Land office at Richmond, Virginia, and deposited

in the said Auditor's Office, under Acts of the Legislature of West Virginia, passed February 24th, 1893, and February 20th, 1897.

Given under my hand and official seal, at Charleston, W. Va., this 30th day of July, 1906.

[SEAL.] A. C. SCHERR, *Auditor.*

3127 MONROE EXHIBIT No. 59.

Joseph Johnson, Esquire, Governor of the Commonwealth of Virginia, to all to whom these presents shall come, Greeting:

Know ye, That in conformity with a survey made on the 4th day of May one thousand eight hundred and fifty by virtue of Land Office Treasury Warrant No. 16,483, there is granted by the said Commonwealth unto Henry White, a certain tract or parcel of land containing forty-seven acres, lying in Preston County adjoining the lands of Baldwin Vanmeter and the Maryland line and bounded as follows, viz: Beginning at a maple corner to Baldwin now said White's thence with his line S. 1 W. 172 poles to a black haw, thence E. 30 poles to pointers in the Md. line with the same N. 1 E. 214 poles crossing snowy creek to a stone pile, corner to Joseph Thomas, with a line of the same W. 60 poles to a cherry tree, his corner and corner to said Vanmeter (now owned by Hagan and others) and with a line of the same S. 16 W. 38 poles crossing said creek to pointers in a line of said Baldwin, with the same reversed S. 81 E. 40 poles to the beginning, with its appurtenances.

To have and to hold the said Tract or Parcel of Land, with its appurtenances, to the said Henry White and his heirs forever.

In witness whereof, The said Joseph Johnson, Esquire, Governor of the Commonwealth of Virginia, hath hereunto [SEAL.] set his hand and caused the Lesser Seal of the said Commonwealth to be affixed at Richmond, on the 1st day of March, in the year of our Lord one thousand eight hundred and 52 and of the Commonwealth the 76th.

JOS. JOHNSON.

3128 STATE OF WEST VIRGINIA,
Auditor's Office, City of Charleston, To wit:

I, A. C. Scherr, Auditor of the State of West Virginia, do hereby certify that the foregoing is a true copy of a paper, purporting to be a grant from the State of Virginia to Henry White, dated the 1st day of March, 1852, on file in said Auditor's office among the certified copies of records received from the office of the Register of the Land office at Richmond, Virginia, and deposited in the said Auditor's Office, under Acts of the Legislature of West Virginia, passed February 24th, 1893, and February 20th, 1897.

Given under my hand and official seal, at Charleston, W. Va., this 30th day of July, 1906.

[SEAL.] A. C. SCHERR, *Auditor.*

3129 MONROE EXHIBIT No. 60.

John Hooker, 2251 Acres, Monongalia Ex'd.

Edmund Randolph, Esquire, Governor of the Commonwealth of Virginia, to all to whom these presents shall come, Greeting:

Know ye, That by virtue and in consideration of part of a land office treasury Warrant No. 21443 Issued the 23rd day of December 1783, there is granted by the said Commonwealth unto John Hooker assignee of Robert Hooker who was assignee of David Graham a certain tract or parcel of land, containing 2251 acres by survey bearing date the 20th day of November, 1786 lying and being in the County of Monongalia, on a branch that empties into Snowy Glade Creek adjoining a survey that belongs to William Ashby called his sugar camp survey on the E. side and extending along both sides of the Snowy Glade Creek and bounded as followeth, to wit: Beginning at a hickory red oak and chestnut and running thence N. 23° W. 207 poles to a white oak thence N. 5° W. 70 poles to a beech, thence N. 27° W. 32 poles to two sugar trees and a beech, thence S. 40° W. 58 poles to a pine, thence S. 23° W. 48 poles to two beeches and a round tree thence N. 54° W. 88 poles to a pine thence N. 40° W. 106 poles to a white oak thence N. 80° E. 44½ to a maple, thence N. 200 poles to two pines and a red oak, thence N. 44° W. 160 poles to a sugar tree, thence N. 81° W. 107 poles to a white oak, thence S. 59° W. 203 poles to a birch and chestnut, thence S. 73° W. 20 poles to a maple and cucumber tree, thence N. 41° W. 71 poles to two chestnuts, thence N. 42° E. 280 poles to two maples, thence S. 48° E 20 poles to a white oak, thence S. 24° E 24 poles to a maple and service, thence S. 81° E. 449 poles to a maple white oak & hickory, thence N. 56° E. 74 poles to a maple birch and ash, thence S. 54° E. 108 poles to a maple thence S. 81° E. 97 poles to a sugar tree, thence, S. 65° E. 65 poles to a white walnut, thence S. 52° E. 28 poles to a maple, thence S. 4° E. 65 poles to a red oak, thence S 8° W. 486 poles to a red oak white oak and chest-
3130 nut thence S. 67¼° W. 230 poles to the beginning with its appurtenances.

To have and to hold the said Tract or Parcel of Land, with its appurtenances, to the said John Hooker and his heirs forever.

In witness whereof, The said Edmund Randolph, Esquire, Governor of the Commonwealth of Virginia, hath hereunto set his hand and caused the Lesser Seal of the said Commonwealth to be affixed, at Richmond, on the 17th day of April in the year of our Lord one thousand seven hundred and 88 and of the Commonwealth the 12th.

[SEAL.]

EDM. RANDOLPH.

3131 STATE OF WEST VIRGINIA.
Auditor's Office, City of Charleston, To wit:

I, A. C. Scherr, Auditor of the State of West Virginia, do hereby certify that the foregoing is a true copy of a paper, purporting to be a grant from the State of Virginia to John Hooker, dated the 17th day of April, 1788, on file in said Auditor's office among the certified copies of records received from the office of the Register of the Land office, at Richmond, Virginia, and deposited in the said Auditor's Office under Acts of the Legislature of West Virginia, passed February 24th, 1893, and February 20th, 1897.

Given under my hand and official seal, at Charleston, W. Va., this 20th day of July, 1906.

[SEAL.] A. C. SCHERR, *Auditor.*

3132 MONROE EXHIBIT No. 61.

William Deakins, Jr., 200 Acres, Monongalia Ex'd.

Edmund Randolph, Esquire, Governor of the Commonwealth of Virginia, to all to whom these presents shall come, Greeting:

Know ye, That by virtue and in consideration of a land office Treasury warrant No. 21005 issued the 1st day of September, 1763, there is granted by the said Commonwealth unto William Deakins, Jr., a certain tract or parcel of land containing 200 acres by survey bearing date the 27th day of September 1787, lying and being in the County of Monongalia, adjoining on the north side of William Ashley's land and bounded as followeth to wit, Beginning at a white oak marked with 10 notches standing on a north line just over from the head of a north branch of Potomac and between the 7th and 10th mile on the same and running W. 41 poles to a forked maple the beginning of John Goffs 241 acre survey and running with same N. 160 poles to 3 white oaks and hickory thence W. 200 poles to a maple and beech still W. 63 poles to pointers thence N. 96 poles to 2 maples and a white oak they being a corner to William Ashley's survey of 300 acres and the end of the 5th line of same thence with said survey S. 55° E. 45¾ poles to a sugar tree spanish oak and ash N. 48° E. 45½ poles to a white oak sugar and pine thence E. 218 poles to intersect a north line from the beginning and with it reversed to the beginning with its appurtenances.

To have and to hold the said Tract or Parcel of Land, with its appurtenances to the said William Deakins, Jr., and his heirs forever.

In witness whereof, The said Edmund Randolph, Esquire, Governor of the Commonwealth of Virginia, hath hereunto set his hand and caused the Lesser Seal of the said Commonwealth to be affixed at Richmond, on the 6th day of November in the year of our Lord one thousand seven hundred and 88 and of the Commonwealth the 13th.

[SEAL.] EDMUND RANDOLPH.

3133 STATE OF WEST VIRGINIA,
Auditor's Office, City of Charleston, To wit:

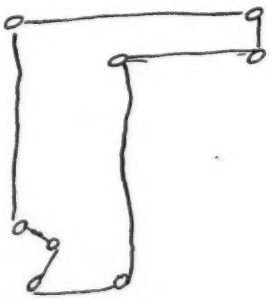
I, L. M. La Follette, Auditor of the State of West Virginia, do hereby certify that the foregoing is a true copy of a paper, purporting to be a grant from the State to Williams Deakins, Jr., dated the 6th day of November, 1788, on file in said Auditor's office among the certified copies of records received from the office of the Register of the Land office at Richmond, Virginia, and deposited in the said Auditor's office, under Acts of the Legislature of West Virginia, passed February 24th, 1893, and February 20th, 1897.

Given under my hand and official seal, at Charleston, W. Va., this 8th day of September, 1899.

[SEAL.] L. M. LA FOLLETTE, *Auditor.*

(Endorsed:) Com. of Virginia. Patent to William Deakins, Jr. Nov. 6, 1788. 200 Acres.

3134 MONROE EXHIBIT No. 62.



SEPT. 27TH, 1787.

Surveyed for William Deakins, Junr., 200 Acres of Land in Monongalia County on Part of a Land Office Treasury Warrant of 1000 Acres No. 21005 Dated the 1st of Dec. 1783 Entered the 14th of Septr., 1784. Adjoining on the South Side of William Ashley's Land Bounded as Followeth, viz:

Beginning at a white oak Mark*t*- with 10 notches Standing on a North line Just Run from the North Branch of Puttomcrek and between the ninth and tenth mile on the same and running West 31 poles to a forked Maple corner to John Goff's 241 Acres Survey, and with the same N. 160 poles to three White Oaks & a Hickory, West 200 poles to a Maple and *Beach sill* West 63 poles to pointers, North 96 poles to two Maples and a White Oak, they being a corner of Wm. Ashleys Survey of 300 acres at the End of the 5th line of the same then with said survey S. 55 E. 45¾ poles to a sugr. Tree Spanis- Oak & Ash, N. 48 E. 45½ poles to a white Oak Sugar tree

and Pine, last 218 poles to intersect a north line from the beginning, and with it reversd. to the Beginning.

By 200 poles to the inch.

JOHN HOOKER,
As't to Sam'l Hanway.

A true copy,
Attest:

JOHN M. GREGG, *Clerk.*

3135 MONROE EXHIBIT No. 63.

Wm. Ashby, 50 Acres, Preston.

John B. Floyd, Esquire, Governor of the Commonwealth of Virginia, to all to whom these presents shall come, Greeting:

Know ye, That in conformity with a survey made on the 10th day of May, one thousand eight hundred and fifty nine, by virtue of Land Office Treasury Warrant No. 17415, there is granted by the said Commonwealth unto William Ashby a certain Tract or Parcel of Land, containing fifty acres in Preston County on waters of Yaughogheny, adjoining Wilts Watering & the Maryland line of Wm. Ashby. Thence 43¼ W. 176 poles to dead cherry trees 2 maples & 3 spruce pines on the W. bank of the Yaugh river and F. 158 poles from a pine marked as a corner the line passes Wilts corner at the end of 30 ¼ poles & and the road leading from said Wilts to Martins at the end of 150 poles pine marked W. A. & crosses Yaugh Thence S. 82 E. 115 poles recrossing said Yaugh to pointers (Buck Dale corner) in the Maryland line with the same N. 142 poles to the beginning with its appurtenances.

To have and to hold the said Tract or Parcel of Land, with its appurtenances, to the said William Ashby and his heirs forever.

In testimony whereof, The said John B. Floyd, Esquire, Governor of the Commonwealth of Virginia, hath hereunto set his hand and caused the Lesser Seal of the said Commonwealth to be affixed at Richmond, on the 1st day of August in the year of our Lord one thousand eight hundred and 51 and of the Commonwealth the 76th.

[SEAL.] JOHN B. FLOYD.

3136 STATE OF WEST VIRGINIA,
Auditor's Office, City of Charleston, To wit:

I, A. C. Scherr, Auditor of the State of West Virginia, do hereby certify that the foregoing is a true copy of a paper, purporting to be a grant from the State of Virginia to William Ashby, dated the 1st day of August, 1851, on file in said Auditor's office among the certified copies of records received from the office of the Register of the Land office at Richmond, Virginia, and deposited in the said Auditor's Office, under Acts of the Legislature of West Virginia, passed February 24th, 1893, and February 20th, 1897.

Given under my hand and official seal, at Charleston, W. Va., this 20th day of July, 1906.

[SEAL.] A. C. SCHERR, *Auditor.*

3137 MONROE EXHIBIT NO. 64.

Frances & Wm. Deakins, 215 Acres, Randolph Examined.

Henry Lee, Esquire, Governor of the Commonwealth of Virginia, to all to whom these presents shall come, Greeting:

Know ye, That by virtue of 2 Land Office Treasury Warrants Nos. 6193 and 15281 There is granted by the said Commonwealth unto Frances and William Deakins a certain tract or parcel of land, Containing 215 Acres, by survey bearing date the 24th day of October, 1792, lying and being in the County of Randolph near the Great Glades and bounded as followeth, to wit, Beginning at 2 white oaks a dogwood and maple, and running 57 poles W. to the first line of Osburns Survey and with it S. 66 poles to a maple W. 30 poles to pointers, N. 34 poles to a maple at the end of the 12th line of the aforesaid Deakins Survey of 2000 Acres, and with said Survey the 2 following lines. S. 24° W. 220 poles to a walnut and maple, S. 5° E. 267 poles to pointers, E. 8 poles to a chestnut, maple and cucumber tree, N. 22° E. 160 poles to a white oak and cucumber, N. 50° E. 97 poles to 2 chestnuts, N. 1 E. 284 poles to the Beginning with its appurtenances.

To have and to hold the said Tract or Parcel of Land, with its appurtenances, to the said Frances & William Deakins and their heirs forever.

In witness whereof, The said Henry Lee, Esquire, Governor of the Commonwealth of Virginia, hath hereunto set his hand and caused the Lesser Seal of the said Commonwealth to be affixed at Richmond, on the 10th day of June in the year of our Lord one thousand seven hundred and ninety four and of the Commonwealth the eighteenth.

[SEAL.]

HENRY LEE.

3138 STATE OF WEST VIRGINIA,
Auditor's Office, City of Charleston, To wit:

I, A. C. Scherr, Auditor of the State of West Virginia, do hereby certify that the foregoing is a true copy of a paper, purporting to be a grant from the State of Virginia to Frances & Wm. Deakins, dated the 10th day of June, 1794, on file in the said Auditor's office among the certified copies of records received from the office of the Register of the Land office at Richmond, Virginia, and deposited in the said Auditor's Office, under Acts of the Legislature of West Virginia, passed February 24th, 1893 and February 20th, 1897.

Given under my hand and official seal, at Charleston, W. Va., this 20th day of July, 1906.

[SEAL.] A. C. SCHERR, *Auditor.*

3139 MONROE EXHIBIT No. 65.

Frances & Wm. Deakins, 6310 Acres, Randolph Ex'd & Del. Mr. Thomas Taylor, 9th Dec. 1797.

James Wood, Esquire, Governor of the Commonwealth of Virginia, to all to whom these presents shall come, Greeting:

Know ye, That by virtue of an exchanged Treasury warrant No. 420, issued the 19th day of November, 1790, there is granted by the said Commonwealth unto Francis and William Deakins, a certain tract or parcel of land containing 6310 Acres, by survey bearing date the 7th day of August 1795, lying & being in the County of Randolph on the head waters of the Black fork of Cheat & bounded as followeth, to wit: Beginning at a sugar tree at the end of the fourth line of a tract of 1900 acres surveyed for David Stewart & David Plunket & running N. 18° W. 840 poles to two pines & a fir tree at the end of the 19th line of Deakins' tract of 9000 acres, and with the lines of said tract reversed N. 46° W. 109 poles to a fur & pine, N. 13° E. 175 poles to five beech trees, N. 21° E. 504 poles to a birch, E. 44 poles to a beech & furr, S. 47° E. 330 poles to a beech, N. 45° E. 55 poles, N. 180 N. 15° E. 260 poles, N. 20° W. 160 poles, N. 20° E. 50 poles to a large cherry tree & chestnut, N. 39° E. 140 poles to a beech & pine, N. 73° E. 124 poles to the Maryland line as run from Fairfax's stone fixed for the head of the North branch. Thence with the Maryland line N. 760 poles to a chestnut tree marked for the four mile tree on the said line & also to the 9th line of Deakins' tract of two hundred & fifteen acres, & with it reversed S. 50° W. 50 poles to a white oak & cucumber, S. 22° W. 160 poles to a chestnut, maple & cucumber, W. 8 poles to pointers at the end of the 14th line of Deakins tract of 2000 acres, & with said tract S. 6° W. 274 poles to pointers, N. 55° W. 16 poles to the N. 35° E. line of Deakins' tract of 5500 acres, & with said line reversed as now corrected S. 35° W. 215 poles to a cucumber & ash still with said tract reversed S. 19° W. 178 poles to a sugar tree & ash, S. 65° W. 40 poles to a large red oak, S. 54° E. 65 poles to a red oak, ash & hickory, S. 36° W. 80 poles to a cherry & two ash trees, S. 31° W. 165 poles to a sugar tree ash & service, S. 40° W. 164 poles to a sugar
3140 tree, S. 11° W. 104 poles to a lynn, S. 40° W. 34 poles to chestnut, cucumber & sugar tree, S. 61° W. 108 poles to a maple, S. 30° W. 130 poles to a birch & sugar tree, being also a corner of Deakins' survey of 4,500 acre tract. Thence with the lines of said 4500 acre tract N. 69° E. 160 poles to a cucumber, S. 60° W. 320 poles to a cucumber, S. 8° W. 104 poles to a sugar tree, S. 70° W. 40 poles to a lynn, S. 88 poles to a red oak, S. 34° W. 164 poles to a sugar tree, S. 75° W. 120 poles to a sugar tree, S. 10° W. 104 poles to a sugar tree S. 45° W. 150 poles to a lynn, S. 30° W. 740 poles to a walnut, Thence by a straight line to the beginning with appurtenances.

To have and to hold the said Tract or Parcel of Land, with its

appurtenances, to the said Francis & William Deakins, and their heirs forever.

In witness whereof, The said James Wood, Esquire, Governor of the Commonwealth of Virginia, hath hereunto set his [SEAL.] hand and caused the Lesser Seal of the said Commonwealth to be affixed at Richmond, on the 31st day of October in the year of our Lord one thousand seven hundred and ninety seven and of the Commonwealth the twenty second.

JAMES WOOD.

3141 STATE OF WEST VIRGINIA.

Auditor's Office, City of Charleston, To wit:

I, L. M. La Follette, Auditor of the State of West Virginia, do hereby certify that the foregoing is a true copy of a paper, purporting to be a grant from the State of Virginia to Francis & William Deakins, dated the 31st day of October, 1797, on file in said Auditor's office among the certified copies of records received from the office of the Register of the Land office at Richmond, Virginia, and deposited in the said Auditor's Office, under Acts of the Legislature of West Virginia, passed February 24th, 1893, and February 20th, 1897.

Given under my hand and official seal, at Charleston, W. Va., this 12 day of September, 1899.

[SEAL.] L. M. LA FOLLETTE, *Auditor.*

(Endorsed:) Com. of Virginia. Patent to Francis & Wm. Deakins. October 31, 1797. 6310 Acres.

3142 MONROE EXHIBIT No 66.

Francis & Wm. Deakins, 9000 Acres, Randolph Ex'd.

Henry Lee, Esquire, Governor of the Commonwealth of Virginia, to all to whom these presents shall come, Greeting:

Know ye, That by virtue of 2 Land Office Treasury Warrants Nos. 21202, and 16288, also 2 Exchanged warrants Nos. 29 and 11, There is granted by the said Commonwealth unto Francis and William Deakins, a certain tract or parcel of land, containing 9000 Acres, by Survey bearing date the 19th day of November, 1792, lying and being in the County of Randolph, on the head waters of the black fork of Cheat River, and bounded as followeth, to wit:

Beginning at a bounded sugar tree standing S. 4½° E. 180 poles from Fairfax's Stone at the head of the N. branch of Potowmack, and running E. 70 poles N. 100 poles, W. 30 poles N. 316 poles, W. 52 poles to the Maryland line, and with it N. 80 poles to a maple marked 1 standing at the end of 1 mile on the Maryland line run from Fairfax's stone aforesaid, then N. 200 poles S. 73° W. 124 poles to a pine and birch, S. 39° W. 140 poles to a large cherry and chestnut, S. 20° W. 50 poles, S. 20° E. 160 poles, S. 15° W. 260 poles,

S. 180 poles S. 45° W. 55 poles to a beech N. 47° W. 330 poles to a beech & *fur* tree, W. 44 poles to a birch, S. 21° W. 504 poles to 5 beeches standing on a small drain and where it enters into a Laurel, S. 13° W. 175 poles to a *fur* tree & pine, S. 46° E. 109 poles to a *fur* tree & 2 pines, N. 52° E. 102 poles to a beech, & maple, S. 52° E. 118 poles to a round wood and 2 beeches on 1 stump, S. 14° E. 314 poles to a large pine, S. 49° E. 100 poles to a beech, N. 73° E. 170 poles to a maple & beech opposite a fall in the black fork of Cheat River, S. 52° E. 25 poles to the end of the last line of David Stewart & David Plunkitt's tract of 1900 acres & with it reversed S. 87° E. 634 poles to 2 beeches from 1 stump, thence N. 64° E. 406 poles to two beeches and a sugar tree, N. 29° E. 222 poles N. 22° E. 180 poles to pointers, N. 31° W. 472 poles to intersect an E. line from
3143 the Beginning, which E. line runs by & bounds on another Survey of Francis & William Deakins, and thence W. 706 poles to the Beginning, with its appurtenances.

To have and to hold the said Tract or Parcel of Land, with its appurtenances, to the said Francis & William Deakins and their heirs forever.

In witness whereof, The said Henry Lee, Esquire, Governor of the Commonwealth of Virginia, hath hereunto set his
[SEAL.] hand and caused the Lesser Seal of the said Commonwealth to be affixed at Richmond, on the 21st day of June in the year of our Lord one thousand seven hundred and ninety four and of the Commonwealth the Eighteenth.

HENRY LEE.

3144 STATE OF WEST VIRGINIA,
Auditor's Office, City of Charleston, To wit:

I, L. M. La Follette, Auditor of the State of West Virginia, do hereby certify that the foregoing is a true copy of a paper, purporting to be a grant from the State of Virginia to Francis and William Deakins, dated the 21st day of June, 1794, on file in said Auditor's office among the certified copies of records received from the office of the Register of the Land office at Richmond, Virginia, and deposited in the said Auditor's Office, under Acts of the Legislature of West Virginia, passed February 24th, 1893, and February 20th, 1897.

Given under my hand and official seal, at Charleston, W. Va., this 8th day of September, 1899.

[SEAL.] L. M. LA FOLLETTE, *Auditor.*

(Endorsed:) Com. of Virginia. Patent. To Francis & Wm. Deakins. June 21, 1794. 9000 Acres.

3145 MONROE EXHIBIT No. 67.

John Hoye, 3000 Acres, Preston Co.

James McDowell, Esquire, Governor of the Commonwealth of Virginia, to all to whom these presents shall come, Greeting:

Know ye, That in conformity with a survey made on the 15th day of June, 1844, by virtue of Land Office Treasury Warrant No. 2895 there is granted by the said Commonwealth unto John Hoye a certain tract or parcel of land containing three thousand acres lying & being in Preston County & bounded as follows, viz: Beginning at pointers standing in the 5th line of a survey patented to William Ashby of 500 acres & reversing the lines of said survey S. 81 W. 60 poles to pointers Thence leaving said survey and running with 2 lines of Robert Hooker's survey of 2251 acres S. 73 W. 20 poles to pointers & stone heap N. 41 W. 71 poles to a cucumber tree and stone pile standing on the flat rock corner to Frances & Wm. Deacons' survey of 6000 acres then reversing said lines corrected S. 21 W. 312 poles to a stake 1st line of Robert Hooker's survey of 207 acres (called Hooker's knob) standing 10 poles N. 52 E. from pointers and rock marked H. it being the 2nd corner of said Hooker's survey of 207 acres then reversing the lines of said survey N. 52 E. 148 poles to pointers the beginning of said survey thence S. 40½ E. 161 poles to pointers N. 86 E. 54 poles to pointers S. 59 E. 43 poles to a birch. S. 23 E. 40 poles to a poplar & large dead chestnut trees. Then S. 76 W. 88 poles to pointers, N. 89 W. 50 poles to pointers N. 31 W. 18 poles to pointers N. 76 W. 163 poles to pointers, N. 37 W. 63 poles to a stake 6 poles from the rock marked H. standing at the end of the first line of said Hooker's of 207 acres, then reversing the line again of Frances & Wm. Deacons' survey of 6000 acres S. 21 W. 200 poles to a maple & 2 pines and servis trees standing on the west side of a branch of Laurel Run then W. 15 poles to a stone & pointers standing at the end of the 2nd line of Frances & Wm. Deacons' survey of 1900 acres. Thence with the lines of said survey cor-
3146 rected S. 24 E. 62 poles to pointers S. 31 W. 28 poles to pointers standing near the edge of a swamp S. 44 E. 166 poles to pointers standing at the edge of some rocks S. 51 E. 120 poles to a large chestnut tree N. 43 E. 6 poles to a large Spanish oak S. 59 E. 32 poles to a birch and beech standing 3 poles W. of a branch of Laurel Run, Thence S. 1 W. 36 poles to a stone marked G. S. 32 E. 22 poles to pointers standing on the top of Foley's knob, Thence S. 89 E. 41 poles to pointers to the 2nd line of Goff's survey of 160 acres, Then reversing the line of said survey N. 76 E. 195 poles to pointers, S. 32 E. 45 poles to pointers standing in a line of Goff's survey of 500 acres & with said survey N. 1 E. 70 poles to a stone pile still with said tract N. 89 E. 130 poles to Deacons' survey of 200 acres & with it N. 1 E. 96 poles to a maple & white oak corner to William Ashby's survey of 300 acres, Thence reversing said survey N. 19 E. 83 poles to a maple oak and service N. 38 E. 160 poles to 2 white oaks and 2 dogwoods standing at the end of the 2nd line

of John Hoy's survey of 500 acres, Thence with said survey S. 22½ W. 225 poles to maples & beech N. 45 poles to a large chestnut stump and pointers N. 83 E. 92 poles to the 6th line of Henry Lower's survey of 200 acres & with said line reversed N. 19 W. 98½ poles to a chesnut N. 26 E. 60 poles to an ash sugar & fallen red oak N. 1 E. 100 poles to a pine thence with Oliver's tract S. 23 W. 48 poles to pointers N. 53 W. 88 poles to a pine, Thence N. 39 W. 100 poles to the beginning with its appurtenances.

To have and to hold the said Tract or Parcel of Land, with its appurtenances, to the said John Hoye and his heirs forever.

In witness whereof, The said James McDowell, Esquire, Governor of the Commonwealth of Virginia, hath hereunto set his [SEAL.] hand and caused the Lesser Seal of the said Commonwealth to be affixed at Richmond, on the 31 day of December in the year of our Lord one thousand eight hundred & 44 and of the Commonwealth the 69th.

JAS. McDOWELL.

3147 STATE OF WEST VIRGINIA,
Auditor's Office, City of Charleston, To wit:

I, A. C. Scherr, Auditor of the State of West Virginia, do hereby certify that the foregoing is a true copy of a paper, purporting to be a grant from the State of Virginia to John Hoye, dated the 31st day of December, 1844, on file in said Auditor's office among the certified copies of records received from the office of the Register of the land office at Richmond, Virginia, and deposited in the said Auditor's Office, under Acts of the Legislature of West Virginia, passed February 24th, 1893 and February 20th, 1897.

Given under my hand and official seal, at Charleston, W. Va., this 20th day of July, 1906.

[SEAL.] A. C. SCHERR, *Auditor.*

3148 MONROE EXHIBIT No. 68.

Patrick Henry, Esquire, Governor of the Commonwealth of Virginia, to all to whom these presents shall come, Greeting:

Know ye, That by virtue of part of a certificate in right of settlement given by the Commissioners for adjusting titles to unpatented lands in the district of Monongalia, Yohogania and Ohio and in consideration of the ancient composition of 30 shillings sterling paid by Levi Beatty into the treasury of this Commonwealth, there is granted by the said Commonwealth unto the said Levi Beatty, a certain tract or parcel of land containing two hundred and seventy-six acres, by survey bearing date the 11th day of June, 1781, lying and being in the county of Monongalia, including his settlement made in the year 1774 and bounded as followeth, to-wit: Beginning at a chestnut corner to Henry Hawks and running N. 10 E. 34 poles to a white oak, N. 30 E. 136 poles to a white oak, N. 10 W. 114 poles to a white oak, N. 88½ W. 71 poles to pointers, S. 55 W. 54 poles to pointers, S. 80 W. 58 poles to a cherry tree corner to Geaorge Beatty and with

his line S. 9 W. 210 poles crossing a Glade run to a cherry tree in Henry Hawks line and with his line S. 86 E. 156 poles to the beginning, with its appurtenances.

To have and to hold the said Tract or Parcel of Land, with its appurtenances, to the said Levi Beatty and his heirs forever.

In witness whereof, The said Patrick Henry, Esquire, Governor of the Commonwealth of Virginia, hath hereunto set his [SEAL.] hand and caused the Lesser Seal of the said Commonwealth to be affixed at Richmond, on the 20th day of March in the year of our Lord one thousand seven hundred and eighty-five and of the Commonwealth the 9th.

P. HENRY.

3149 STATE OF WEST VIRGINIA,
Auditor's Office, City of Charleston, To wit:

I, A. C. Scherr, Auditor of the State of West Virginia, do hereby certify that the foregoing is a true copy of a paper, purporting to be a grant from the State of Virginia to Levi Beatty, dated the 20th day of March, 1785, on file in said Auditor's office among the certified copies of records received from the office of the Register of the Land Office at Richmond, Virginia, and deposited in the said Auditor's Office under Acts of the Legislature of West Virginia, passed February 24th, 1893, and February 20th, 1897.

Given under my hand and official seal, at Charleston, W. Va., this 28th day of July, 1906.

[SEAL.] A. C. SCHERR, *Auditor.*

3150 MONROE EXHIBIT No. 68*a*.

Mr. Conrad Nine, His Patent, "Maryland," 130¼ Acres.

THE STATE OF MARYLAND, &C.:

Know ye, That whereas John Hoye of Allegany County, has surveyed and laid out for him a tract or parcel of land called "Maryland" lying in the County aforesaid and containing one hundred and thirty acres and one quarter of an acre, by virtue of a Special Warrant for five acres and obtained by him the eleventh day of July one thousand eight hundred and ten, as appears; and he having fully compounded for said land according to Law; and since by his assignment transferred the same unto Conrad Nine.

The State of Maryland doth therefore hereby grant unto him the said Conrad Nine the said tract or parcel of land called "Maryland," lying in Allegany County aforesaid.

Beginning at the end of the fifth line of a tract or parcel of land known and distinguished by the name of "Piney Bottom," with a retrospective of one degree for variation on said tract of land, and running thence with the sixth and seventh lines of "Piney Bottom," by that allowance for variation, south, twenty one degrees west, forty eight perches; south, forty five degrees east fifty perches; then leav-

ing the lines of "Piney Bottom." and running thence south thirty six degrees west, eighty six perches; north, sixty two degrees west, ninety five perches to the Virginia and Maryland line, as run under the direction of Francis Deakins at the time of laying out the lots to the westward of Fort Cumberland, and thence running with the said line north, two hundred and ten perches; thence by a straight line to the beginning.

Containing and now laid out for one hundred and thirty acres and one quarter of an acre, according to the Certificate of survey thereof, taken and returned into the Western Shore Land Office, bearing date the 10th day of August eighteen hundred and ten, and there remaining, together with all rights, profits, benefits and privileges thereunto belonging. To have and to hold the same unto him, the said Conrad Nine, his heirs and assigns forever.

3151 Given under the Great Seal of the State of Maryland, this twenty third day of January eighteen hundred and twenty three.

Witness the Honorable John Johnson, Esq., Chancellor.

[THE GREAT SEAL.]

SAMUEL STEVENS, *Jun'r.* JOHN JOHNSON, *Chan'r.*

LAND OFFICE OF MARYLAND, *sct:*

I hereby certify that the aforegoing is a true copy of the patent for "Maryland" 130¼ acres, as recorded in Liber I. B. No. E. folio 581 &c., one of the Record Books of this office.

In testimony whereof, I have hereunto set my hand [SEAL.] and affixed the Seal of the Land Office of Maryland, this eighth day of October, eighteen hundred and ninety six.

WM. O. MITCHELL,
Commissioner of the Land Office.

(Endorsed:) Copy Patent "Maryland," 130¼ acres. Cost 1.05.

3152 MONROE EXHIBIT No. 69.

A List of the Names of Persons, Among Others, Assessed with Real Estate in the Second Assessment District in Preston County, West Virginia.

3153 MONROE EXHIBIT No. 69.

STATE OF WEST VIRGINIA,
County of Preston, To-wit:

I, George A. Walls, Clerk of the County Court of the said County, do hereby certify that the following persons, among others, are assessed with Real Estate in the Second Assessment District of said County, as follows:

GEO. A. WALLS,
Clerk County Court, Preston County, W. Va.

3154

	Name of the person who, by himself or by his tenant, has the freehold in possession of the land charged.	Number of acres in each tract.	Name of the tract, if it has a name; local description of land, reference to water courses, mountains, or other places on or near which it lies.
	Portland District:		
M*	Albright, Henry B.	113	Snowy Creek.
M	Albright, Eli G.	180	Pine Swamp.
	" " "	50	" "
M	Albright, Marcellus	5 112/160	" "
	Anderson, Robert J. *et al.*		Two lots, Corinth.
M	Albright, A. S.		Lot 19, Cranesville.
M	Albright, Henry B.		One lot, "
	Butler, Margaret J.		Two lots, Corinth.
	Bishop, Geo. H	3	Cranesville.
M	Browning, J. D	6⅙	"
M	Bowman, Brown & Pickenpaugh	778	Pine Swamp.
M	Browning, J. D.	19	Cranesville.
	Corinth Co. of W. Va.	½	Snowy Creek.
	" " "	½	" "
M	" " "	8½	" "
	" " "	½	" "
	Cupp, Mary A.		Lot 27, Corinth.
	Crane, Lydia		" 23, Cranesville.
	De Berry, Oliver		Two lots, Corinth.
M	" J. F.		" " "
	De Witt, Effie M.		One " "
M	De Berry, Wesley & Mary B.	186	Near Corinth.
	" " " "		Lot in Corinth.
	" " " "		93 "A" Min. Rt. Jacob F. Sisler.
	" " " "		52¾ "A" Min. Rt. Harry B. Fraley.
	" " " "	88 22/100	Elseys Run.
M	De Berry, Wm. H.		Lot 5, Corinth.
	" "	19 97/160	Snowy Creek (Surface).
	" "	30	" " "
	" "	50¾	" " "
M	De Berry & Bishop	70	" " "
	" " "	320	" " (Orr land).
	Engle, Hannah E.		Lot 10, Cranesville.
	Felton, Jno. E.	48¾	Near Corinth.
M	" Samuel A.		Four lots, Corinth.
	" Geo. M.		Two " "
M	Freeland, Sarah E.		Lots 80 x 120 ft. "
M	Feather, Jos. C.	280	Pine Swamp.
	Fuller, Ed. B	½	Corinth.
	" "		40 x 270′ near Corinth.
	" "		Lot 9 "
M	" "		Two lots, "
	" "		Lot 17, "
M	Frazee, Calvin	10¼	Pine Swamp.
M	Falkenstein, J. M.	2¼	" "
M	Friend, David H.	100	" "
	Felton, E. W.		Six lots, Corinth.
	" "	15½	Corinth.
	" "	41	Mill Property (Sur.).
3155			
	Felton, E. W.		Lot 80 x 120′ Corinth.
	" "		" 15 & 16, "
	" "		" 80 x 12′ "

*The letter M is in red ink, on the left margin, in copy.

	Mary S. Felton	.....	" 30 & part 5, "
	" "	.....	Three lots & 1680'.
	" "	.....	Lot 40 x 140' Corinth.
M*	Falkenstein, Chas.	10	Pine Swamp.
M	Frazee, Jefferson	74/160	" "
M	Frazee, D. W.	23¾	" "
	" "	12 45/160	" "
	Fuller, Idora J	.....	Lot 50 x 150, Corinth.
	" "	.....	One lot, "
	" "	.....	" " No. 7 "
	" "	.....	Two " "
M	Falkenstein, G. H.	1 107/160	Salt Block Run.
	Felton, Z. T.	.....	One lot, Corinth.
	Frankhouser, Kenneth B	65	Snowy Creek.
	Fraley, Geo. Mc.	1½	Near Corinth.
	Fuller, Margaret A.	.....	Three lots, Corinth.
	Fichtner, Minnie	.....	Two lots "
	Felton, Geo. M.	.....	" " "
	Forman, Lee A.	.....	Lot 80 x 120 "
	Felton, Samuel A.	.....	Four lots, "
M	Frazee, D. W.	.....	Two lots, Cranesville.
M	Feather, Joseph W.	.....	" " "
M	Glover, Dennis	25	Snowy Creek.
	" "	100	Md. Line.
M	Groves, J. C.	30	Pine Swamp.
	" Parley N.	120	Snowy Creek.
M	" Wm. T.	8½	White Oak Springs.
	" "	18½	" " "
	" "	6	" " "
	" "	14¾	" " "
	" "	.....	Two Lots, Lime Quarry.
M	" Moses T. & Alvira A.	54¾	White Oak Springs.
	Groves, Moses T.	6	" " "
	Goff, Judson S.	10	Snaggy Mountain.
M	Groves, S. S & M. A. & J. W. Lewis.	75	White Oak Springs
	Groves, N. L. h'rs.	25	Md. Line.
M	Gibson & Brown	154½	Pine Swamp.
M	Hayes, Abraham L.	80¼	" "
	" "	3¾	Pt Hayes' Land.
	Hanger, Jennie	.....	Five lots, Corinth.
	" "	.....	Two " "
	Herring, Hosea M.	.....	" " "
	Jeffreys, Ulysses	1½	Pine Swamp.
	" Chas. F.	100	" "
M	" Wm. M.	146½	" "
	Jacobs, Chas. F.	74	" "
	Jordon, S. H.	.....	Two lots, Corinth.
	" "	.....	Pt. lot 8 "
	Livengood, S. B.	.....	Two " "
	Lee, C. C.	114	Snowy Creek Glades.
M	" "	42	" " "
	" "	1/160	White Oak Springs.
	Lewis, J. W. & Minnie	30	Pine Swamp.
	" Marshall	12	Snowy Creek.
	" Silas	50	Pine Swamp Sur. & ½ min.
M	" H. C.	85	" "
	" "	17	White Oak Springs.
3156			
	Lewis, H. C.	39½	Snowy Creek.
	Livengood, Jarrett M.	.....	Three lots, Corinth.
M	Metheny, Francis	86	Snowy Creek.
	" "	30	" "
	" "	69	" "

*The letter M is in red ink, on the left margin, in copy.

M*	Mattingly, W. T.	3¾	Pine Swamp.
	" "	8 134/160	Salt Block Run.
	Metheny, John	40½	Pine Swamp.
	" George	14¾	" "
M	" "	10	" "
M	Metheny, Emanuel	70	Pine Swamp.
	Mayer, John C.	80½	" "
	Metheny, James	182	" "
	McCroby, Wm. S.	9 143/160	" "
M	Menear, Mary E	95	Snowy Creek.
	" "	3	" "
M	Metheny, Obediah	32	Pine Swamp.
	" "	100	" "
M	Mattingly, James H	¼	Cranesville.
	Nine, T. W	.....	One lot, Corinth.
M	Newman, W. B.	44	Snowy Creek Sur.
	" "	17	" "
	Nine, Sarah E.	.....	Three lots, Corinth.
	Oakland Coal Company	101¾	Snowy Creek.
	" " "	170	" "
	" " "	100	" "
	" " "	.....	158 "A" Coal Rt.
	" " "	.....	274 " "
M	" " "	.....	101¾ " "
	" " "	.....	61 " "
	" " "	.....	95 " "
	" " "	.....	132 " "
	" " "	.....	Lot 100 x 100′ Corinth.
M	Ringer, Preston	86	Pine Swamp.
	" "	22	" "
	" David J.	23	" "
	Riley, Wm. L.	112	" "
	Ringer, Hiram	212 7/16	" "
	Rinard, S.	41 66/100	" "
	Ringer, Henry C.	100	" "
	Rowe, Albert	.....	One & pt. lot, Corinth.
	Ringer, Hiram W.	.....	Four lots, Cranesville.
M	Schoolfield, Margaret C.	840¼	Snowy Creek Glade.
	Sisler, Rachel	44	" " "
M	" "	12½	" " "
	Shahan, Albert	71	W. O. Springs.
M	" "	100	" "
	Shank, Jennie C	.....	Two lots, Corinth.
	" "	.....	One lot, Corinth.
	" "	.....	" "
	Shank, R. J. L. & Jennie C.	17	Snowy Creek.
	" " " "	49 63/160	" "
	" R. J. L.	.....	Two lots, Corinth.
	" "	.....	" "
M	Shaffer, Harriett	5 15/160	Pine Swamp.
M	Shriver, H. Z.	12	Snowy Creek.
	Smoot, Jas. R. *et al*	33 "A" Coal	Rt. J. A. Young, Tr.
	" " "	100 "	" Wm. H. De Berry.
	" " "	17 "	" " "
M	" " "	50 60/160 "	" " "

3157

	Smoot, Jas. R. *et al*	48¾ Coal	Rt. H. M. Herring Tr.
	" " "	53 "	" Wm. B. Newman "
	" " "	6	Snowy Creek.
	Summers, Delia E.	.....	One lot, Cranesville.
	Strawser, Noah W.	.....	Two "
M	Teets, H. Greeley	200	Pt-Wardwell Ld. Offutt and Lakin.

* The letter M is in red ink, on the left margin, in copy.

	Thompson, Robert	.....	One lot, Corinth.
	" "	.....	" "
M*	Teets, Chas. G	19⅜	Cranesville.
	Titchnell, Drusilla J. & Lucinda	86	W. O. Springs.
	" " " "	63¼	" "
	Titchnell, Edward	30	Pine Swamp (Sur.).
			8½ "Min. Rt."
	Thomson, Anna	.....	Two lots, Corinth.
M	Taylor, Joseph I	1	Pine Swamp.
	Titchnell, Wm. D	63	" "
M	" "	4 62/160	" "
	Titchnell, Herman F	20	" "
M	Teets, Albert	2	Cranesville.
	Taylor, Mary M	34	Pine Swamp.
	Teets, Marin L	.....	One lot, Corinth.
	" "	.....	" "
	Teets, Chas. G	.....	Eight lots, Cranesville.
	" "	.....	Ten " "
	Thorpe, Mamie	.....	One " Corinth.
M	Wilhelm, Nora H	36 17/160	Pine Swamp.
	Wolf, Jacob C	5 4/10	Near Cranesville.
	" "	2	" "
M	" "	8 15/16	" "
	" David	123	Salt Block Run.
	Wilhelm, Jonathan, Jr	63 66/160	" "
M	" Abraham	10 45/160	" "
	White, Mary	27	Snowy Creek.
	White, Estella V	175	" "
	Wilhelm, Henry B	¼	Pine Swamp.
	" "	½	" "
	" "	3	" "
	" "	1 15/16	Saw Mill.
	*Not wanted on list		
	Wilson, Lydia C	100	Pine Swamp.
	Wilhelm, Chas	34⅜	" "
	Wolf, James M	16½	Salt Block Run.
	Wilhelm, Jacob	23	" "
	Wilburn, C. S	.....	One lot, Corinth.
	" "	.....	Three lots, "
	Wolf, David W. Jr	10½	Salt Block Run.
	" Hiram W.	10½	" "
	Wilhelm, M. L. (heirs)	24⅝	" "
	Wood, Fred W. *et al.*	.....	Lot 80 x 100′, Corinth.
	Wilhelm, Wm	.....	Three lots, Corinth.
	Young, Joseph A	28/160	Corinth.
M	" "	33	Near Corinth (Surface).
3158	Pleasant District:		
M	Chidester, Isaac N	85½	Pine Swamp.
M	" "	297½	" " Surface.
M	Garner, Rebecca	85	Sandy Creek.
	Guthrie, Homer R	66¾	McAllister Ridge.
M	" John	50 72/160	" "
	" "	50	" "
	" "	211	Beaver Creek.
	" Wm. H	1 86/160	Valley Point.
M	Guffy, J. M	2600	N. B. Browning Tract.
	" "	465	Salt Block Run.
M	Harden, Nancy	21 71/160	McAllister Ridge.
	" "	60	" "
M	Hartman, Elisha A	100	Coal, Nolan Chidester.
	Jones, Edward	100	Dog Ridge.
M	" "	5¼	" " (Surface).

*The letter M is in red ink, on the left margin, in copy.

M*	Rodeheaver, Sophia	70 154/160	McAllister Ridge.
M	" Hosea V	146½	Pt. Dank Land (Surface).
M	Reckert, John A	100	" " "
	" "	40	Beaver Creek.
M	" Henry L	87½	Pt. Dank Land.
	" Aletha	52	" "
	Savage, Preston	115	Md. Line.
M	" Asa	44	" "
	" "	9 69/160	McAllister Ridge.
M	Sisler, Lloyd M	74	Danks Land.
	" Wm. T	65	McAllister Ridge.
	Savage, Sarah E	50	" "
	Shroyer, T. J	100	Dog Ridge (Surface).
	Sisler, E. F	92	Md. Line.
	Sines, Henry P	110	Muddy Creek.
M	" "	6	" "
	Wakefield, Robert S	18	" " (Surface)
	" "	2½	" " "
	" "	25/160	" " "
	Wilhem, Jacob G	42½	McAllister Ridge.
3159	Grant District:		
	Bowman, Lakin, De Barry & Pickenpaugh	66 54/160	Md. Line.
M	Boger, Samuel	120	Little Sandy.
	" "	60	Big Sandy.
	Beeghley, Emanuel	13 7/160	Near Bruceton.
M	Cuppett, A R	320	Penna. Line.
M	" Lee S	153	Glade Farm.
	Christopher, R. S	75	Cheat Hill.
M	Fike, Wm. M. & J. A	150 15/160	Md. Line.
	" John W	50	" "
	" James	51	" "
	" Franklin T	17¾	" "
M	" Sylvanus	100	" "
M	" Joshua	53	" "
	" "	48	" "
	Frazee, Geo. F	60	Near Md. Line.
	" Orval, Ross	160	Md. Line.
M	Friend, Marshall	116	" "
	Miller, Martha A	222	Glade Farm.
	" "	159	" "
	" Joseph R	116¾	" "
	McErvin, Jas. M	156	Little Sandy.
	Nicola, John	128	Danks Land.
M	Niner, Joseph	209	Glade Farms.
	" "	57½	" "
	Robinson, Jno. C. (Heirs)	167	" "
M	" " "	15	" "
	Spurgeon, James M	165	" "
M	" "	220	Dog Ridge.
	" James C	172	Little Sandy.
	" Jesse	120½	Glade Farms.
	" Lucian	160	" "
	Teets, Geo. W	82	Md. Line.
M	" "	31½	" "
	Thomas, M. M	63 106/160	" "
	" "	21	" "
M	" Germanus	30	" "
	" Josiah	48½	" "
	Vansickle, Jno	159 78/160	" "
	" Emily J	64½	" "
	" C. T	68 142/160	" "
M	" Geo. H	30 7/160	" "
	" "	90 93/160	" "

* The letter M is in red ink, on the left margin, in copy.

3160	**Union District:**		
	Ashby, Hester A	12	Md. Line.
	" E	20	" "
M*	Breedlove, R. E. L	90	Yough River.
M	Bush, Lewis	186 11/16	Eglon.
M	Buchtle, Elijah	36¾	Md. Line.
	Bowman, John R	93½	Yough River.
M	" "	58	Foley Knot.
M	Beckman, Henrietta & children	186	Yough River.
M	Biser, Dennis	42½	" "
	Crow, John T	70	" "
M	" "	52½	Ger. Set'l.
M	Colcamp, August	77½	"
M	Danson, James C. (heirs)	214	Yough River.
	" Lloyd	1 17/160	Pt. Wilt Farm.
	Dawson, Elisha	47½	Yough River.
	" "	9	Near Aurora.
M	Fike, Jonas	60¾	Maple Run.
	" "	29	Adj. Yough.
	" "	35¾	" "
M	" Emory T	20	Ger. Set'l.
M	" Adolphus R	48 2/5	Yough River.
	" P. L	15⅞	Wolfe Creek.
	" "	41	Head Yough.
	" Jno. S	87½	" "
	" "	34¼	" "
M	" Silas	51	Adj. Heckart.
M	" Washington	100	Yough River.
M	" Amelius	3	" "
M	" A. M	50	" "
M	" Aaron	1 6/10	" "
	" Aaron	26 56/160	" "
M	Geissman, Geo	108 108/160	Ger. Settlement.
	Gregg, Daniel	22	Md. Line.
M	Henze, August (heirs)	10½	Yough River.
	" " "	55	" "
M	Hamstead, Geo. B	69 29/160	Eglon.
	" "	38 26/160	"
M	Hendrickson, Daniel M	132	H. S. Run.
M	Judy, Jacob C	88 139/160	Ger. Sett'l.
M	Kight, Wm. E	60	Yough River.
M	Loar, Mary C	500	Md. Line.
	" "	625	Min. Rt. under P. L. Co. Land.
M	Liller, Catharine	33½	H. S. Run.
M	Miller, Benj	131 23/160	Laurel Run.
M	Nine, Peter F	1¼	Md. Line.
	Offutt, D. E	600	Yough River.
	" "	466 119/160	" "
M	" "	8¾	" "
	" "	25	Pt. Wilt Farm.
	Preston Lumber & Coal Company	150	Tim. Rt. Thos. Parks h'rs.
	" " " "	233½	" John " Tr.
	" " " "	4863	SnowyCreek-KembleLand
M	" " " "	510	" " Bruner "
	" " " "	625	Md. Line-D. H. Loar, Sur.
M	Pangh, Taylor	25	Yough.
	Rembold, Amos	4¼	Forks Yough.
M	" "	43	" "
3161			
M	Roth, Wm. E	111¼	Ger. Set'l.
	Rumers, Friddle	20¼	Yough.
M	Rembold, Joseph	136 3/10	"
	" "	122½	"

* The letter M is in red ink, on the left margin, in copy.

(Here follows plat.)

[Endorsed on back of map.]

John & Jos. Rodeheaver *vs.* Henry Lewis.

Plat.

Filed March 17th, 1859.

MONROE EXHIBIT # 70.

We the Jury find the defendants Guilty and we find for the plaintiff one undivided thirteenth part of the two hundred and nin-ty seven acres of Land discribed in the declration and we find for the pla-ntiff John Rodeheaver twelve undivided thirteenths of the said two hundred and nin-ty seven acres of Land.

3162 MONROE EXHIBIT NO. 70.

JOHN & JOS. RODEHAVER
vs.
HENRY LEWIS.

In Obedience to an Order of the Circuit Court of Preston County.

After giving the parties notice, I went upon the land in controversy, and made the survey as laid down in the annexed diagram. Beginning at a W. O. marked A on the Plat and run the calls of the John Rodehaver Patent S. 34 E. 130 po. to a W. O. N. 60 E. 119 po. to 2 Chestnut Oaks on the side of a Snaggy Mountain (the Patent calls only 99 po.) North 43 po. to a Red Oak N. 42 E. 150 po. to a Stone pile on a bald hill side (Patent calls only 110 po.) N. 20 W. 98 po. to a Chestnut N. 23 E. 83 po. to a small W. O. & Ash (Patent calls only 63 po.) N. 47° E. 52 po. to a Red Oak N. 30 W. 55 po. to a Spruce pine S. 47° W. 79 po. to a double Spruce Pine (Patent calls only 59 po.) N. 60 W. 30 po. to a W. O. thence S. 30° W. 380 po. to the Beginning (Patent calls *calls* only 320 po.) I found all the corners & lines well marked with the exception of the closcing line which was not marked.

N. B.—The Henry Lewis improvement lays within the red lines which is shown by B on the plat.

GEO. M. MICHAEL, *S. P. C.*

(Endorsed:) We the Jury find the Defendants guilty and we find for the plaintiff one undivided thirteenth of the two hundred and ninety seven acres of land discribed in the declaration and we find for the plaintiff John Rodeheaver twelve undivided thirteenths of the said two hundred and ninety seven acres of land.

(Endorsed:) John & Jos. Rodeheaver *vs.* Henry Lewis. Plat. Filed March 17th, 1859.

3163 (Endorsed:) Supreme Court U. S. No. 1 Original, Oc. Term, 1907. Maryland *v.* West Virginia. Filed Oct. 15, 1907.

(Endorsed:) Office Supreme Court U. S. Filed Oct. 15, 1907. James H. McKenney, Clerk.

3164 In the Supreme Court of the United States.

No. —. Equity.

STATE OF MARYLAND
vs.
STATE OF WEST VIRGINIA.

Deposition of witnesses taken in Oakland, Garrett County, Maryland, before Harland L. Jones, a Notary Public of the State of Maryland in and for said Garrett County, on Saturday, the 21st day of July A. D. 1906, to be read on behalf of the Defendant in a Chancery suit now pending in the Supreme Court of the United States, wherein the State of Maryland is plaintiff, and the State of West Virginia is defendant.

Testimony Taken on Behalf of the State of West Virginia.

Counsel for Maryland, Edward H. Sincell.
Counsel for West Virginia, George E. Price.

WILLIAM C. CLAYTON, a witness being produced, and by me duly sworn on behalf of the State of West Virginia deposes and says:

Q. Please state your name, age, residence and occupation?

A. William C. Clayton, Seventy five and a half years old. Reside at Keyser, West Va. Am a Lawyer.

Q. Where were you born?

A. Hampshire County, Virginia. Part of the County is still Hampshire County, West Virginia.

Q. In what part of Hampshire County were you born?

A. About sixteen miles from Romney.

Q. Please state where you have resided during your lifetime?

A. Well from the time I was eleven years old, I lived at Romney, County seat of Hampshire County, which was my home up until 1872 when I moved to Keyser, West Va.

Q. Is Romney the present County seat of Hampshire County?

A. Yes sir it is.

Q. Where is Romney located with reference to the South Branch of the Potomac River?

3165 A. It is about a quarter of a mile from the bank of the river.

Q. How far westward did Hampshire County extend in your early days?

A. Hampshire County extended to the Maryland line on the

West into the Alleghany Mountains. The line on the East was between Hampshire and Frederick Counties, Virginia.

Q. During all the time since you recollect, what has been held to be the dividing line between Hampshire County and Maryland?

A. The North Branch of the Potomac, until you get below the South Branch.

Q. Did the State of Virginia exercise jurisdiction South and West of the North Branch since you have known it?

A. Yes sir, entirely.

Q. What other County was created out of the original County of Hampshire?

A. Mineral County. Keyser is the County seat on the North Branch of the Potomac, a little way from the foot of the Mountains.

Q. How far is Keyser, West of Cumberland, Maryland?

A. Twenty three miles from Cumberland. Only a little west of Cumberland.

Q. When was Mineral County created?

A. My recollection is that it was created by the Legislature of 1864. The Legislature of West Virginia.

Q. Since the creation of West Virginia what State has embraced jurisdiction?

A. State of West Virginia.

Q. What Counties lie west of the South Branch of the Potomac, and extending to Preston County, West Va?

A. Part of Hampshire County lies West of the South Branch of the Potomac, also part of Hardy County, which was divided as Mineral was, and Grant was formed and occupied the whole
3166 territory West of Hampshire.

Q. Then is there no territory South of Grant County through which the South Branch runs?

A. Yes Sir.

Q. Assuming that the South Branch of the Potomac rises in Virginia what parts of Counties would be included in the territory?

A. There would be part of Pendleton, all of Grant, and I think nearly all of Mineral County, and part of Hampshire, and Hardy and also part of Randolph, Tucker and Preston.

Q. Would it cut the State of West Virginia in two?

A. Yes sir, entirely in two.

Q. Now have you practiced law in that territory?

A. I have practiced in Hampshire, Hardy, Grant, Tucker, Mineral, Randolph and Preston.

Q. Now before the Courts of what State did you practice in that territory?

A. Courts of West Virginia. Before Mineral County was cut off I practiced in Romney, and after Mineral was cut off I practiced in Keyser. I practiced in Romney from 1859, and I practiced in Hardy, Moorfield also.

Q. Have you ever known the Courts of the State of Maryland to exercise any jurisdiction there?

A. No sir.

Q. Are there regularly orginized Courts in that territory?

A. Yes sir, ever since I have known it. The West Va. Courts have always exercised jurisdiction there. There have been probably some changes in the County lines.

Q. How has that territory been represented in Congress?

A. Since I first recollect it by Virginia. Then West Virginia.

Q. Who have been the representatives of that territory since you have known it?

A. From the present time going back by Thomas D. Davis,
3167 Alston G. Dayton, William L. Wilson, J. B. Hogue, B. F. Martin, and C. J. Falkner.

Q. Where does the present representative in the Congress reside?

A. At Keyser, Mineral County, within the territory embraced in the lands above mentioned.

Q. In what Judicial District of the United States is that territory?

A. Now in the Northern District.

Q. Have the Federal Courts of the District of Maryland ever exercised Jurisdiction there?

A. No sir not to my knowledge.

Q. By what State are the schools in that territory maintained?

A. Entirely by West Virginia.

Q. Are the roads there maintained by the same authorities?

A. Yes, sir.

Q. Have any taxes ever been collected in that territory by the State of Maryland or under her authority?

A. No sir, not to my knowledge.

Q. Will you state whether there is any difference in the names by which the South and North Branches of the Potomac are distinguished?

A. The South Branch is always spoken of as the South Branch, the other sometimes as the North Branch and sometimes only as the Potomac. My experience in copying deeds is, sometimes we find that lines call for the Potomac, but the other I always put it the South Branch.

Q. Do you know where the F-irfax Stone is located?

A. I know about where it is located but I have never been right to the place where it is located. Never went just to it. Have been in the town of Fairfax.

Q. Assuming that the stone is only a mile or two from Fairfax station, and you have been that close to it, has the jurisdiction of the States of Virginia and West Virginia along and up to that point all the time?

3168 A. It has as territory of West Virginia.

Q. Have you ever represented any *secion* of the State in the Legislature?

A. I represented as Senator in the Senate of 1875.

Q. At that time you lived where?

A. I lived at Keyser where I live now. During the campaign I was in all the Counties except Pendleton.

Q. You know Hon. Henry G. Davis do you?

A. Yes sir.

Q. Was he ever in the United States Senate?

A. He was in the United States Senate. He was elected by the Legislature of West Virginia.

Q. Where did he live at the time he represented West Virginia in the United States Senate?

A. At his home in Piedmont, West Va. in Mineral County.

Q. Where with reference to the North Branch of the Potomac River?

A. Right on it, at the foot of the Allegany Mountains, and subsequently he built his home at Elkins in Randolph County, West Virginia.

Cross-examination waived by Mr. E. H. Sincell, Counsel for Plaintiff. Further Deponent saith not.

Signature of witness waived by agreement.

JOSEPH REMBOLD, a witness being produced, and by me duly sworn on behalf of the State of West Virginia, deposes and says:

Q. Please state your name and age.

A. Joseph Rembold, and am sixty one years old.

Q. Where do you live, Mr. Rembold?

A. Preston County, West Virginia.

Q. What is your occupation?

A. For several years I have been in the lumber business and am a farmer.

3169 Q. What part of Preston County do you live in?

A. Might call it the Western, rather the Southwestern part. Union District.

Q. How far do you live from the Fairfax Stone?

A. I do not know exactly. About five miles I think.

Q. Do you know where a line was run or surveyed by Mr. W. McCullough Brown, Surveyor in *the* this case, in the year 1897?

A. Yes sir I know it.

Q. Where did that line run with reference to your place Mr. Rembold?

A. It ran through my farm on the top of the hill.

Q. How much land do you own there?

A. Something over two hundred acres.

Q. From whom did you get that land?

A. From my father Henry Rembold.

Q. How long have you owned the land?

A. I have owned it forty one or forty two years. My father owned it something like fifteen years I think.

Q. Is your father now living?

A. No sir.

Q. Have you lived on your land ever since you owned it?

A. Yes sir I have.

Q. Did anybody live on that land before you *go* it?

A. Not all the time. Mr. Miles improved part of the land before I got it.

Q. Do you know from whom your father got that land?

A. Yes sir. He got it from Christian Wiles. Wiles got it from a man named Rudolph. I think Samuel Rudolph.

Q. Do you know what original patent covers that land?

A. No sir I do not.

Q. That title is held in what State?

A. In the State of West Virginia.

Q. In what State has it been assessed for taxes since you have known it?

A. In the state of West Virginia.

3170 Q. Is any part of that land assessed for taxes in the State of Maryland?

A. None of it is assessed in Maryland.

Q. Before Mr. Brown's line was run through there had you ever heard of a boundary line in that locality?

A. No sir. There was a line surveyed and cut out about a mile and a quarter east of my place.

Q. Who owns the lands South and West of you?

A. Quite a few.

Q. Please give the names of the people who live between the line run by Mr. Brown in the year 1897 and the old State line as you remember it?

A. Herbert Evans; R. E. L. Breedlove; on the East. Taylor Paugh; I. W. Shaffer; A. C. Winters; John Slaubaugh; Raymond Winters; Edward Winters; on the North. E. E. Rembold; Martha Winters; runs up to the line probably. Elijah Bachtle; Creed Stemple; Sophia Wolfe; Fred Slaubaugh; Eli Slaubaugh and Charles Shank.

Q. How far north does that run?

A. About a mile north of my place.

Q. How far South have you named?

A. Not more than half a mile.

Q. Any person live South of the line you have named?

A. James George; Annie Hollan and George Parks.

Q. Now Mr. Rembold these people you have named, do you know where they vote?

A. They vote at Eglon, Union District, Preston County, West Va.

Q. The elections held there are held under the authority of what State?

A. Under the authority of West Virginia for State and County officers.

Q. How do you know the persons you have named vote there?

A. Because I vote there myself and see them there.

Q. Do you know what State their lands are assessed in for

3171 State taxes?

A. In the State of West Virginia.

Q. Are there any public schools in that section Mr. Rembold?

A. Yes sir. Our school is at Horse Shoe Run North West of my place.

Q. Children of the people living between the lines you have mentioned attend what schools?

A. All attend West Virginia schools.

Q. Any public roads leading East and West by your place?
A. Yes sir.
Q. By what State authority are those roads worked?
A. They are worked by West Virginia.
Q. How far westward do the authorities work the roads there?
A. They work the roads to what we call the old Maryland and West Virginia line a mile and a quarter east of the line run by Mr. Brown.
Q. Have you ever known any jurisdiction being exercised by the State of Maryland between those lines?
A. No sir I have not.
Q. Did you ever see the old line run?
A. No sir I did not.
Q. Did you ever see the line run by Mr. Julius K. Monroe on behalf of the State of West Virginia in this case?
A. I saw him there, but did not see him run it.
Q. Do you know where he run the line?
A. It is a mile and a quarter eastward of the Brown line. I don't know the exact place he run. I know the old line in places.

The Witness was here cross-examined by Mr. Sincell, Counsel for the State of Maryland.

Q. What line do you mean by being the line surveyed and cut out?
A. I mean the old line.
Q. Who surveyed and cut out that line?
A. I do not know.
3172 Q. When was that line surveyed and cut out?
A. Before I ever came to this country.
Q. Do you know where the Michler line is?
A. I do not know as I do. Several years ago they run a line through there, but it was South of the line there now.

Re-examined by Mr. PRICE, Counsel for West Virginia:

Q. When did you go into that country?
A. In the year 1865, at the close of the war.

Further this deponent saith not.

Signature waived by Counsel.

JACOB SLAUBAUGH, a witness produced, and being by me duly sworn on behalf of the State of West Virginia, deposes and says?

Q. State your name, age, place of residence and occupation?
A. My name is Jacob Slaubaugh. My age is 53 years. I reside in Union District, Preston County, West Va. and am a farmer.
Q. Do you live in Preston County?
A. Yes sir.
Q. What part of the County do you live in?
A. I live in the south part of the County. Union District.
Q. Do you live near the Backbone mountain?

A. Yes sir, on the west side of the mountain.
Q. Do you own any land where you live?
A. Yes sir, I own one hundred and eight acres.
Q. How long have you owned it?
A. About thirty-five years.
Q. From whom did you get it?
A. From Mr. Enos Sell.
Q. Do you know from whom Mr. Sell got it?
A. Henry Slater. He bought off the Deakins survey of which it is a part.
Q. Do you know the quantity of acres in the old original Deakins Survey?
3173 A. No sir I do not.
Q. In what State is that land assessed for taxes?
A. It is assessed in Preston County, West Virginia.
Q. Has it always been so assessed?
A. Yes sir.
Q. Has it ever been assessed in the State of Maryland?
A. No sir it was never assessed in Maryland.
Q. Do you know where the line was run in the year 1897 by Mr. Brown?
A. Yes sir. They run through a part of my land.
Q. Before that line was run had you ever heard of a line in that neighborhood?
A. No sir.
Q. Where do you understand the line to be, any line you knew?
A. The old line that was cut out was the line I understood as the old line. The old original line.
Q. Where is that line in reference to your place?
A. About a mile and a quarter East. We used to see a rock monument on that line from our place.
Q. Is the line run by Mr. Brown, you say that line runs through your place?
A. Yes sir it does.
Q. Do you know of any other line than the line on which the monument stands?
A. No sir. A reference line was run by some one in 1894 I think. I do not know who run it. I think it was by Mr. Monroe.
Q. Where did that line run with reference to the line on which the monument stands?
A. East of that line a few rods I think.
Q. Now Mr. Slaubaugh how long have you lived in that section?
A. About thirty five years.
Q. Where did you live before?
A. I was raised where my brothers live on the old home
3174 place, three miles northeast of where I now live, near the old Maryland line.
Q. Who are your brothers?
A. Eli and Frederick. They live on the old home place.
Q. Where was their land assessed, in what state?
A. In West Virginia.

Q. It extended to the old line did it?
A. Yes sir.
Q. Will you give the names of such people you can recall that live between the old line and the line run by Mr. Brown?
A. Henry Holland; John Sparks; James Gorge; Lee Breedlove; Taylor Paugh; Herbert Evans; A. C. Winters, Raymond Winters; Isaac Shaffer; John Slaubaugh; Charles Winters; Edward Winters; Edward Rembold; George Hauser, Sophia Wilt; Creed Stemple; Elijah Bachtle; Eli Sla-baugh; Fred. Slaubaugh; O. Hampstead; Charles Shank and Charles Jones.
Q. How far does that carry you northward from your place?
A. Three miles.
Q. Are there any persons south of you between the line run by Mr. Brown and the Fairfax Stone?
A. No sir.
Q. Taking the people you have named, do you know where they vote?
A. Yes sir. Eglon, Preston County, West Virginia.
Q. The elections in which they vote are held under the jurisdiction of what State?
A. West Virginia.
Q. How do you know they vote at Eglon?
A. I vote there myself.
Q. Where is your land assessed for taxation?
A. It is assessed in West Virginia.
Q. The other people you have mentioned pay their taxes in West Virginia?
A. Yes sir.
3175 Q. Under what authority do they work the roads in that section?
A. Under the authority of West Virginia.
Q. By what authority are the public schools maintained in that section?
A. By West Virginia in Preston County.
Q. Have you ever known any jurisdiction exercised in that section by the State of Maryland?
A. No sir I have not.
Q. Do you know where the stone was planted by Mr. Brown when they ran through your place near the spring on Backbone Mountain?
A. Yes sir. I have been there since the stone was planted there and before. Yes sir often.
Q. Had you ever heard a name for that spring there?
A. No sir I never heard a name for it.
Q. Have you been to the Fairfax Stone?
A. Yes sir.
Q. How long since you first was there?
A. Some forty years ago when I was a boy.
Q. Who went with you?
A. My father and some other neighbors. We took cattle there.
Q. Who told you it was the Fairfax Stone?

A. My father told me it was the Fairfax Stone.
Q. Was that before or since the war?
A. Since the war.
Q. Do you remember when the Michler line was run in 1859?
A. Yes sir I can remember when it was run.
Q. Was there more than one line?
A. Only one line then. It was cut out wide.
Q. Was there another line along there known as the Maryland line before the Michler line was run?
A. Of course there was, but I do not remember any other line.

3176 Cross-examined by Mr. SINCELL, Counsel for State of Maryland.

Q. That is the line that you knew there as the Maryland Line?
A. Yes sir.

Further this deponent saith not.

Signature waived.

No other witnesses being present to be examined, I closed the said depositions and herewith return all of said testimony taken by me on behalf of the State of West Virginia this 23rd day of July 1906.

[SEAL.] HARLAND L. JONES,
Notary Public.

I hereby certify that the cost of taking said depositions is as follows:

Harland L. Jones, Notary Public	$ .60
James C. Peddicord, Stenographer	9.00
	$9.60

Endorsed: No. —. Equity. In the Supreme Court of the United States. State of Maryland *vs.* State of West Virginia. Depositions taken by Harland L. Jones, N. P., on behalf of West Virginia.
Office Supreme Court U. S. Filed Oct. 15, 1907, James H. McKenney, Clerk.

3177 In the Supreme Court of the United States. In Equity.

THE STATE OF MARYLAND, Plaintiff,
vs.
THE STATE OF WEST VIRGINIA, Defendant.

Depositions on Behalf of the Defendant, Taken at Kingwood, West Virginia, July 23rd and 24th, 1907.

Appearances.

For the Plaintiff: Mr. E. H. Sincell.
For the Defendant: Hon. George E. Price.

Supreme Court U. S. No. 1 Original, Oct. Term, 1907. Maryland *v.* West Virginia, Filed Oct. 15, 1907. Office Supreme Court U. S. Filed Oct. 15, 1907. James H. McKenney, Clerk.

3178 THE STATE OF MARYLAND
vs.
THE STATE OF WEST VIRGINIA.

3179 *Index of Witnesses.*

	Direct ex.	Cross-ex.	Redirect ex.	Recross-ex.
A. M. Fike	2	7	8	9
Silas R. Fike	11	16	18	19
H. H. Beckman	20	25	27	28
Joseph Guthrie	29	33	34	
E. G. Albright	36	46	x51	
Wesley De Berry	54	59		
Lloyd Dawson	61	64	67	
A. J. Thomas	68	74	75	77
Julius K. Monroe	79	112	118	120
Jermanous Thomas	95	102	105–110	108

Documentary References 122 to 134, inclusive.

3180 In the Supreme Court of the United States. In Equity.

THE STATE OF MARYLAND
v.
STATE OF WEST VIRGINIA.

It is agreed that the depositions to be taken by The State of West Virginia at Kingwood, Preston County, West Virginia, commencing on the 23rd day of July, 1907, may be taken before a Notary Public without notice, the Plaintiff appearing by Counsel and waiving notice, and may be certified in the usual manner, under the seal of the Notary Public; that they may be taken down by a stenographer, in short-hand writing, and afterwards transcribed by him

from his stenographic notes, each party waiving the signatures of the witnesses to their respective depositions.

(Signed) EDWARD H. SINCELL,
Ass't. Counsel for the State of Maryland.

(Signed) GEO. E. PRICE,
Counsel for the State of West Virginia.

3181 In the Supreme Court of the United States. In Equity.

THE STATE OF MARYLAND, Plaintiff,
vs.
THE STATE OF WEST VIRGINIA, Defendant.

Depositions of witnesses taken in Preston County, West Virginia, before me, Neil J. Fortney, a Notary Public in and for said Preston County, at the Court House of said county, at Kingwood, on the dates hereinafter set forth, beginning on the 23rd day of July, 1907, pursuant to the stipulation of counsel hereto attached, to be read as evidence in behalf of the defendant in a chancery suit now pending in the Supreme Court of the United States, wherein the State of Maryland is Plaintiff and the State of West Virginia is Defendant.

Present: E. H. Sincell, Esq., counsel for the State of Maryland; and George E. Price, Esq., counsel for the State of West Virginia.

A. M. FIKE, a witness produced on behalf of the State of West Virginia, having been first duly affirmed, deposes and says as follows:

Deposition of A. M. Fike.

Examination by Mr. PRICE:

Q. 1. Mr. Fike, your deposition was taken in this case last July, was it not?

A. Yes, sir.

Q. 2. You stated at that time that you lived in Union District, in Preston county, West Virginia, and that you owned a tract of
3182 land adjoining what you claim to be the old Maryland line?

A. Yes sir.

Q. 3. Do you still live in the same place?

A. In the same place; yes sir.

Q. 4. And still own the same land?

A. The same land; yes, sir.

Q. 5. Who owns the tract of land lying North of you on the West Virginia side of the Maryland line?

A. Silas Fike.

Q. 6. Since you were examined in this case last Summer has Mr. Julius K. Monroe, the surveyor, been at your place?

A. Yes, sir.

Q. 7. When was he at your place?

A. I could not tell you the date but it was along in the Spring sometime. I cannot tell you the date any more for I did not keep any account of it.

Q. 8. In the Spring of 1907?

A. Yes sir.

Q. 9. Who was with him?

A. There was six of them together—Mr. Sincell, there, and Mr. Wolf and Mr. Ed West, and I do not remember the others any more.

Q. 10. Now, at that time did you point out any object on the ground as the corner of your land?

A. I went up part of the way and showed him the tree but I did not go clear of it.

Q. 11. Did you go within sight of it?

A. Yes, sir.

Q. 12. And you pointed it out to him?

A. Yes, sir.

3183 Q. 13. What kind of a tree is that?

A. It is a big oak tree—a white oak.

Q. 14. Is it marked?

A. Yes, sir; there are some marks on it.

Q. 15. Are they ancient or recent marks?

A. I think they are both, if I am not mistaken.

Q. 16. Is it anciently marked?

A. Well, now, I ain't right positive; I cannot tell any more but I think that it is.

Q. 17. Is it a large tree?

A. Yes, sir; it is a very large tree.

Q. 18. How long has it been there?

A. Ever since I knew anything, and long before, too, because it is a very large tree. It was there long before I was in this world.

Q. 19. Now, you pointed that out to Mr. Monroe as a corner of your land?

A. Yes, sir.

Q. 20. What corner is it?

A. It is the Northeast corner, I guess a person would call it, of my land.

Q. 21. How does that stand with reference to the Maryland line as recognized and claimed by you?

A. Well, it stands on the line as claimed—the line that they all claim through there now—both sides.

Q. 22. Is it a common corner with any other land except yours?

A. Yes, sir; Silas Fike's land corners there, and Seymour Hamstead's land corners there and George Hen Gauer's land corners there.

3184 Q. 23. Hamstead Gauer own land on which side?

A. On the Maryland side.

Q. 24. And as far as you know do they recognize this tree as a corner.

A. Yes sir; they do. Of course Gauer's—they ran within about that close to the tree (indicating) and their calls ran out and they

just planted a stake but I own there. I believe that I heard them say that the call was a call for an oak tree but their calls ran out before getting there the last time they surveyed—that the land was run off.

Q. 25. You say in running out his land he ran how close to the tree?

A. Well, in the neighborhood of three feet, may be four, or something along there; I could not tell; I never measured it; I know it is not far.

Q. 26. And the distance ran out then, did it?

A. Yes, sir.

Q. 27. And they did not go to the tree?

A. No, they did not go to the tree.

Q. 28. Is the land fenced up to this tree?

A. Yes sir.

Q. 29. Are there any fences on the State line?

A. Yes sir; there are fences on the State line and between me and Gauer there is a fence.

Q. 30. Is there a fence between Silas Fike and Hamstead

A. There used to be but he bought a piece of land of Hamstead there and he has taken that away now; it runs in a different direction now, I remember when he took it away.

3185 Q. 31. Did this fence run up to this oak tree?

A. Yes, sir; it came to the oak tree.

Q. 32. Is there a division fence between Gauer and Hamstead?

A. No. Well, yes, sir; but not two fences; there is just one fence that comes between them.

Q. 33. Well, there is a division fence between them?

A. Yes, sir.

Q. 34. Does that division fence come up to this oak tree?

A. Not quite; it don't quite hit it.

Q. 35. It comes to within three feet of it?

A. Something like that; I do not just remember.

Q. 36. Do you know of any claim on the part of Hamstead or Gauer, or the people that they claim under, to go West of the line of that tree?

A. No, sir; none.

Q. 37. I believe you said that there had been a fence along this line running North from the tree, but that Silas Fike bought a piece of land on the Maryland side and took the fence away?

A. Yes, sir.

Q. 38. Now, after you get North of Silas Fike's land are there any fences on this Maryland line?

A. Yes, sir; from there on.

Q. 39. How far?

A. Well, I guess it is a mile and a half or something like that before there is any break in it—something like that.

Q. 40. Whose land joins along there?

A. H. H. Beckman's and Lloyd Dawson's.

Q. 41. How long have you known the fence to stand in that way?

A. Ever since I was big enough to know anything.

3186 Q. 42. What would you say as to whether this fence along Beckman's and Lloyd Dawson's line is in a line with your fence and this oak tree?

A. Yes, sir; it is on a line with it; I have been all along it.

And upon cross-examination by Mr. SINCELL, the witness testified as follows:

Cross-examination:

Q. 1. Who first pointed that tree out to you?

A. I believe it was Abe Wiles.

Q. 2. Is he living or dead?

A. He is living.

Counsel for the State of Maryland here moves to strike out the testimony of this witness as to the tree spoken of by him, on the ground that said evidence is incompetent, the party who first pointed it out to the witness being alive.

And upon redirect examination by Mr. PRICE, the witness testified as follows:

Redirect examination:

Q. 1. Is Mr. Wiles the party from whom you purchased this land?

A. Yes, sir.

Q. 2. Where does he live?

A. He lives rather to the left of Terra Alta from here.

Q. 3. What is his age?

A. Well, I do not know; he is sixty-five or something along there—may be not quite that old. Yes, I guess he is something along that age.

Q. 4. When did he point out this corner to you with reference to the time that you bought from him?

3187 A. Just when we bought, of course.

Q. 5. When you bought from him he pointed that out as one of the corners?

A. Yes, sir.

Q. 6. Were you on the ground at the time?

A. Yes, sir.

Q. 7. Had he lived on the land?

A. Yes, sir.

Q. 8. How long?

A. I could not tell you the length of time; he must have lived there on it fifteen years, I suppose.

And upon recross-examination by Mr. SINCELL, the witness testified as follows:

Recross-examination:

Q. 1. Did you ever see the line dividing the two states run through there at that point?

A. No, sir. The man that ran that line? No, sir; I never saw him.

Q. 2. Did you ever see any one run it through there?
A. I have seen different ones running through there; not that line though.
Q. 3. Where did they run?
A. Well, Brown, of course, ran away up on this side of me. I guess,—well, it must be a mile or over; yes, sir; it is over a mile from there, I guess.
Q. 4. Where did Mr. Monroe run?
A. He ran beyond that a little piece.
Q. 5. East or West of it?
A. East.
Q. 6. How far East?
3188 A. That is something that I am not able to tell you.
Q. 7. Can you approximate the distance East that Mr. Monroe ran?
A. No, sir; I cannot.
Q. 8. Do you know about how far?
A. I do not know just exactly where he ran there. I seen where he had run to there some places, but right there I could not tell you; I was not by right at that place.

SILAS R. FIKE, a witness produced on behalf of the State of West Virginia, having been duly affirmed, deposes and says as follows:

Deposition of Silas R. Fike.

Examination by Mr. PRICE:

Q. 1. State your name, age, residence and your occupation?
A. My name is Silas R. Fike; age forty-three; residence Union District, Preston county; farmer.
Q. 2. Do you own any land in Union District, Preston county, West Virginia?
A. Yes, sir; I do.
Q. 3. Where does it lie with reference to the dividing line between Maryland and West Virginia?
A. Well, it joins; it runs right up to the line.
Q. 4. Where does it lie with reference to the tract of land of Mr. A. M. Fike?
A. It joins his.
Q. 5. Which side of him?
A. On the North side.
Q. 6. You are North of him?
A. Yes, sir.
3189 Q. 7. Have you a common corner on the State line?
A. Yes, sir.
Q. 8. What is that corner?
A. It is an oak tree; my deed calls for an oak tree on the old Maryland line.
Q. 9. Is there a tree standing there now?
A. Yes, sir.
Q. 10. What kind of a tree is it?

A. It is an oak tree—a white oak tree.
Q. 11. Well, describe it?
A. Well, it is a large white oak tree.
Q. 12. How large?
A. It is just like any other oak tree.
Q. 13. How large?
A. Oh, may be it is two feet through or over; the height of it I did not measure but it is a tall tree.
Q. 14. Has it any ax marks on it?
A. Yes, sir; I think I noticed some ax marks; of course they were old marks, but it has been marked.
Q. 15. Why do you say that is a corner between you and A. M. Fike?
A. Well, because my deed calls for a corner there—it calls for an oak tree.
Q. 16. From whom did you obtain title to this land?
A. From Mrs. Britt.
Q. 17. What is her first name? What is her husband's name?
A. Benjamin Britt.
Q. 18. What was her maiden name before she was married?
A. I could not tell you.
Q. 19. Where did she get the land?
3190 A. The land belonged to the old Rudolph tract of land.
Q. 20. How long have you had it?
A. I have had it since 1888.
Q. 21. Have you lived on it since then?
A. Yes, sir.
Q. 22. Who lived on it before you?
A. Nobody that I know of.
Q. 23. You built a house on it?
A. Yes, sir.
Q. 24. In what State and county has it been assessed for taxation?
A. In Preston county, West Virginia.
Q. 25. Any where else?
A. Not to my recollection.
Q. 26. Have you paid the taxes to the authorities of the State of West Virginia?
A. Yes, sir.
Q. 27. Now, where is the dividing line between the State of West Virginia and the State of Maryland with reference to this oak tree corner of which you have spoken?
A. Well, it stands right on the line.
Q. 28. The tree stands on the line?
A. Yes, sir.
Q. 29. Well, why do you say that is the line?
A. Well, because my deed calls for an oak tree on the old Maryland line.
Q. 30. Well, is that recognized as the State line by the land holders there?
A. Yes, sir.
Q. 31. Who owns the land opposite you to the eastward?

3191 A. Seymour Hamstead.

Q. 32. How long has he held it?

A. Oh, he has been there seven or eight years, I believe.

Q. 33. What line has Mr. Hamstead recognized as the State line?

Question excepted to by counsel for the State of Maryland.

A. Well, he runs to the same—to the Maryland line.

Q. 34. The same that you claim?

A. Yes, sir.

Q. 35. Has he ever claimed to run West of that?

A. No, sir.

Q. 36. Has anybody along there that you know of?

A. No; not that I know of.

Q. 37. Does the line which you claim to be the Maryland line correspond with the eastern line of Mr. A. M. Fike?

A. Yes, sir.

Q. 38. And who owns the land North of you?

A. Why, Mr. Beckman.

Q. 39. What Beckman?

A. Mr. Henry Beckman.

Q. 40. And how does his eastern line compare and correspond with this oak tree and this Maryland line as you claim it?

A. Well, it runs parallel to his—my fence does.

Q. 41. What do you mean by "parallel?"

A. I mean a straight line, of course.

Q. 42. You mean the same line extends on from the tree through you East of Beckman?

A. Yes, sir.

Q. 43. Who is North of Beckman?

A. Mr. Floyd Dawson.

3192 Q. 44. And what is his eastern line as compared with yours and Beckman's?

A. Well, it is the same; it runs the same.

Q. 45. Is there any other fence along there?

A. Yes, sir; there is a fence. There is no fence between mine and the Maryland line. I tore that away. That was between me and Hamstead and I tore the fence out.

Q. 46. When did you tear it out?

A. Well, directly after I—Oh, it has been four or five years ago or may be longer.

Q. 47. Before that time how long had that fence stood there?

A. I could not tell you how long.

Q. 48. Well, what is your recollection—as long as you can recollect?

A. Yes, sir; there was an old fence there as long as I recollect. Of course it was not very much of a fence when I bought it; there were no fences much on the place; there was an old row running through there and I built the fence up. Afterwards I tore it down and set it over—when I bought this tract of Hamstead.

Q. 49. You say there was an old fence row there?

A. Yes, sir.

Q. 50. Now, this tract you bought of Mr. Hamstead, in what State and county do you pay taxes?

A. Maryland.

Q. 51. What county in Maryland?

A. In Garrett county.

And upon cross-examination by Mr. SINCELL, the witness testified as follows:

3193 Cross-examination:

Q. 1. Did you ever see any one run the State line through to the oak tree spoken of in your testimony?

A. No, sir.

Q. 2. Do you know where Mr. Julius K. Monroe ran the line in this case for the State of West Virginia?

A. No, sir; I do not.

Q. 3. When you bought this property it was lying out to commons, was it not—unfenced?

A. Yes, sir; there was not very much of a fence on it although there is part of it farmed still and a little hay made on it.

Q. 4. And that was in 1888?

A. Yes, sir.

Q. 5. And you built this fence up along this line after that of course?

A. Yes, sir.

Q. 6. Who pointed that tree out to you?

A. Well, my deed pointed it out to me. Of course I knew that this tree was supposed to be on the line before that time because I was acquainted in that country before I bought this.

Q. 7. What caused you to suppose it was on the line?

A. Well, because we worked the roads to this line and we paid taxes—that is, the neighbors all around there—to this line.

Q. 8. How far through that section do you know of that line extending in a northerly and southerly direction from that tree?

A. Oh, I do not know the distance at all; I am acquainted with it a good ways through there but I could not say the distance.

Q. 9. Now, will you please state who pointed the tree out to you?

3194 A. Well, I say again of course that my deed calls for this tree.

Q. 10. What person, if any, pointed the tree out to you?

A. I do not know that there was any particular person pointed the tree out to me.

Q. 11. Then you simply know it from a call in your deed?

A. Yes, sir.

And upon redirect examination by Mr. PRICE, the witness testified as follows:

Redirect examination:

Q. 1. Is there—since you have been in that neighborhood—any reputation with reference to that tree, amongst the older citizens there, and that line?

WITNESS: Any reputation?
Mr. PRICE: Yes, sir.
WITNESS: I do not know as I just understand the question.
Q. 2. Well, amongst the older citizens in that neighborhood what is that tree regarded as?
A. Well, it is regarded as being on the Maryland line.
Q. 3. Is it regarded as being a corner?
A. Yes, sir; that is, not a corner on the Maryland line but a corner to the tract of land, you know.

And upon recross-examination by Mr. SINCELL, the witness testified as follows:

Recross-examination:

Q. 1. What Maryland line is it regarded as being on?
A. The old Maryland line, I call it; I do not know what other people call it.
Q. 2. The old Maryland line?
3195 A. Yes, sir.
Q. 3. Do you know of any other lines through there that are known as Maryland lines?
A. No; I do not.
Q. 4. Did you ever hear of any other lines through there that are known as Maryland lines?
A. I know of lines that have been run through there.
Q. 5. Were they called Maryland lines?
A. No; I do not think so.

H. H. BECKMAN, a witness produced on behalf of the State of West Virginia, having been first duly sworn, deposes and says as follows:

Deposition of H. H. Beckman.

Examination by Mr. PRICE:

Q. 1. Give your name and your age?
A. T. H. Beckman; age 47.
Q. 2. And your place of residence?
A. Union District, Preston county.
Q. 3. And your occupation?
A. I am a farmer.
Q. 4. Do you own any land adjoining the boundary line between West Virginia and Maryland?
A. Yes, sir.
Q. 5. Where is that land situated with reference to the land on which Mr. Silas Fike lives?
3196 A. It lies North of Silas Fike.
Q. 6. How much land have you there?
A. I have 186¾ acres, I believe.
Q. 7. How long have you owned it?
A. Fourteen years this last March.
Q. 8. From whom did you get it?

A. From Isaac Gibson Kitzmiller. It was rather under a trust at the time I bought it but he owned it before I did.

Q. 9. How long did he own it?

A. I could not say for I do not know.

Q. 10. In what State and county is that tract of land assessed for taxes?

A. In the State of West Virginia and county of Preston.

Q. 11. Has it always been assessed in that State and county?

A. As far as I know.

Q. 12. Has it ever been assessed in the State of Maryland?

A. Not that I ever heard of.

Q. 13. What is the distance that it borders on the Maryland line?

A. I could not tell you.

Q. 14. About how far?

A. I cannot tell you.

Q. 15. Well, is it a quarter of a mile?

A. Yes, sir; it is very close to it.

Q. 16. About a quarter of a mile?

A. Yes, sir; about a quarter of a mile.

Q. 17. Is there any fence on this eastern side of your land?

A. Yes, sir.

Q. 18. How long has it been there?

A. I could not tell you.

3197 Q. 19. How long within your knowledge?

A. Part of it has been there for twenty odd years and part of it not quite so long. The fence was there when I bought it.

Q. 20. Who owns the land lying East of that?

A. Jack Shuttlesworth.

Q. 21. Does he claim to own it in Maryland or West Virginia?

A. He owns this one in Maryland.

Q. 22. What is recognized as the line between you and him?

A. The Virginia line.

Q. 23. This line on which this fence is?

A. Yes, sir.

Q. 24. Do you know where there is a large oak tree standing as a corner between Silas Fike and A. M. Fike?

A. I have seen the tree; I never was right up to it, though.

Q. 25. Now, this fence that you state is on the Maryland line, how does it run with reference to that oak tree?

A. It runs in line with it.

Q. 26. You have a house on this land?

A. Yes, sir.

Q. 27. How long has there been a house on it?

A. That is more than I can tell you—ever since I saw the place and that is some thirty odd years ago; it was an old house then.

Q. 28. Please state whether during this last Spring—probably in the month of April—Mr. Julius K. Monroe was over there on your land?

A. There was a man there by the name of Monroe; I didn't ask his given name.

Q. 29. Is this the man who is here now—this gentlemen? (Pointing to Mr. Julius K. Monroe.)

3198 A. No; he was an older man; I think this man might be his son from the looks of him. This man and that man look enough alike to be twins, though.

Q. 30. Well, now, was anybody with Mr. Monroe?

A. There was a crowd with them but I did not see all of them.

Q. 31. When he was there did you point out any corner to him—any corner of your lands?

A. I ain't certain but I believe I pointed out the northeast corner of my farm between me and Dawson.

Q. 32. What kind of a tree is there?

A. It is a white oak.

Q. 33. Now, where does the white oak stand with reference to the Maryland line?

A. It stands right on the line.

Q. 34. How do you come to claim that as your corner?

A. Well, it is what my deed calls for and Mr. Dawson, here, told me that that was a corner tree.

(Counsel for the plaintiff excepts to what Mr. Dawson told him.)

Q. 35. You spoke of a fence along the line: Where does that fence run with reference to this tree? Does the fence run to the tree?—your fence?

A. The tree stands right in the fence corner.

Q. 36. Now, who owns the land North of you along the line?

A. Floyd Dawson.

Q. 37. And is that common corner between you and him recognized as such by both of you?

A. Yes, sir; it is.

Q. 38. Is there a fence along that line East of Mr. Dawson's line?

A. Yes, sir. East did you say?

3199 Q. 39. Along the eastern side of Mr. Dawson's land?

A. Yes, sir.

Q. 40. And is that fence—Mr. Dawson's eastern fence— in a line with your eastern fence?

A. Yes, sir.

Q. 41. And how long have you known that to be regarded as the Maryland line?

A. Oh, I have heard it spoken of as the Maryland line for the last thirty-odd years.

Q. 42. What is the reputation in that neighborhood, amongst the people—the older people—with reference to where the Maryland line is?

A. Well, it is claimed there.

Q. 43. Has it always been so since you have known it?—I mean by the people owning the land and living in that neighborhood?

A. I never knew but one dispute of it. I know of two men having a dispute about it but they settled it on that line.

Q. 44. They did settle it on that line?

A. Yes, sir.

And upon cross-examination by Mr. SINCELL, the witness testified as follows:

Cross-examination:

Q. 1. Who had the dispute as to the location of the line?
A. August Smith and Louis Selders; they are both dead now.
Q. 2. Where did Louis Selders claim the line to be?
A. Where it is now.
Q. 3. Where did August Smith claim it to be?
A. Ten or twenty rods in on this side further—an old line run through there years ago; the stumps is there yet.
3200 Q. 4. To the West?
A. To the West.
Q. 5. Who ran that old line?
A. I could not tell you.
Q. 6. How long has it been since that old line was run through there?
A. I could not tell you that.
Q. 7. Was it run through there as a dividing line between the two states?
A. I suppose so; there was a big line cut—a big lot of timber cut—but I do not know who ran it.
Q. 8. Do you know the direction of the fence which is on the eastern side of your place—that is, as to how it runs?
A. No, I cannot give the latitude.
Q. 9. Does it run North and South?
A. Yes, sir; it runs North and South.
Q. 10. Did you ever see that line run?
A. Not that line that the fence is on; no, sir.
Q. 11. You never did?
A. No, sir.
Q. 12. Do you know where Mr. Monroe ran the line for the State of West Virginia, in this case?
A. Yes, sir; that is,—let me ask you a question; there was a line run through there but I do not know who ran it; if Mr. Monroe ran the line then I know what you mean; it is about twelve years ago that Mr. Monroe ran the line.
Q. 13. That was a line run for the State of West Virginia, in this case, as you understand it, was it?
A. Yes, sir.
3201 Q. 14. Where was that line run with reference to the line which you now recognize as the dividing line between the two states?
A. It was run East of this about twenty rods or probably a little farther.
Q. 15. And the other old line to which you have referred ran about twenty rods West of the line which you recognize as the boundary line between the states. Is that correct?
A. That is correct.
Q. 16. Then it is rather uncertain as to where the line is?
A. Well, there are three lines there and this middle line is claimed—(interrupted)

Q. 17. And that is the line that you recognize?
A. That is the line I recognize; that is the line I pay taxes to.

And upon redirect examination by Mr. PRICE, the witness testified as follows:

Redirect examination:

Q. 1. Outside of this dispute between the two men you have mentioned, do you know of any claim by any body to either of the lines which have been mentioned by Mr. Sincell except the old Maryland to which you claim as the true Maryland line?
A. That is the only one that I remember—the only one that I know of—and that is the only dispute I remember.
Q. 2. And all the people there have always recognized the line as you claim it?
A. As far as I know.
Q. 3. Is the line that runs West, that you speak of, some twenty rods, known as the Michler line?
A. I think it is but I am not positive; I have had people tell me what it is called, but I am not positive.
Q. 4. Is that the line that cut the wide swath through the trees?
3202 A. Yes, sir.

And upon re-cross-examination by Mr. SINCELL, the witness testified as follows:

Recross-examination:

Q. 1. Has Mr. Monroe, or anyone else representing the State of West Virginia in this case, ever run the line as you recognize it?
A. No, sir.

JOSEPH GUTHRIE, a witness produced on behalf of the State of West Virginia, having been first duly affirmed, deposes and says as follows:

Deposition of Joseph Guthrie.

Examination by Mr. PRICE:

Q. 1. Please give your name?
A. Joseph Guthrie.
Q. 2. Your age?
A. I was sixty-one, if I am not mistaken, the first day of June last.
Q. 3. Where do you reside?
A. In Preston county—the lower end.
Q. 4. And your occupation is what?
A. My general occupation is farming but I work at many little things.
Q. 5. I believe it is stated in the prior depositions that we took here that you are a minister.
A. Yes, sir.

Q. 6. And married people sometimes?

3203 A. Yes, sir; that is right.

Q. 7. In your deposition which was taken in this case on August 27, 1896, you stated that you owned a tract of land consisting of three parcels—eighty-five acres, twenty-five acres and thirty acres. Do you still own that land?

A. Yes, sir; that makes one hundred and forty, does it?

Mr. PRICE: Yes, sir.

WITNESS: That is correct, then.

Q. 8. You stated in that deposition that the new Maryland line went through this farm of yours?

A. That is right.

Q. 9. And that you had some land between the old and the new lines?

A. Yes, sir.

Q. 10. That is correct, is it?

A. That is right; yes, sir.

Q. 11. Looking at the map made by Julius K. Monroe in this case, I call your attention to a monument on the Pennsylvania line, marked "Michler Monument," and to the line running due South from that point, and I will ask you whether that line passes through your tract of land?

A. I think it does. It is the line that is cut ——. Just a thought right here: Those men ran it by starlight and by flags several years ago; that is the line you are speaking of, I suppose.

Mr. PRICE: Yes, sir.

A. (continued): Well, that is the line.

Q. 12. Now, looking at that map at the tract of land marked "Guthrie" with the figures "80" and "25" will you state

3204 whether that representation on the map correctly indicates the tract of land that you own?

A. Well, if I understand this map right it looks as though it ought to be about right. Here I have twenty-five acres (indicating) and there I have eighty (indicating), and on the West further I have thirty acres; that makes the amount you called off. The thirty acres lies on the West; this is the thirty acres in here and this is the twenty-five that lies on the Southeast, and this twenty-five acres here (indicating) is all between these two lines—the old lines—that is, this line I call it—and this one (indicating on the map.)

Q. 13. The Michler line?

A. Yes, sir; here is the line; I do not understand much about that but if I understand it right it runs right through the twenty five acres.

Q. 14. Now, was Mr. Julius K. Monroe at your place last Spring?

A. Yes, sir; he was there in a big snow storm.

Q. 15. At that time did you point out to him any corner of your land?

A. Yes, sir; I did; I went with him over to this twenty-five acre lot and showed him the corner tree.

Q. 16. What did you point out?

A. I pointed out a chestnut.

Q. 17. A chestnut tree?

A. Yes, sir; it was a large, old, shelly chestnut tree, with the top broken out and smaller trees had grown up around it which were the pointers. They put up from around roots of it—young trees; I think there was about three of those young ones which were a foot or a foot and a half through that ran up from it. They were
3205 all standing there in a bunch (indicating on the map,) and that is right here.

Q. 18. How is it marked—with what kind of red letters?

A. "H. 1."

Q. 19. Why do you say that is a corner of your land?

A. Because me and my neighbors always called it that and I had the line surveyed and the surveyor said it was, and that is all I know about it. That is the reason I call it a corner.

Q. 20. How long have you owned that piece of land, Mr. Guthrie?

A. About thirty-seven years. Well, now, this piece of land you are speaking of here—that twenty-five acres (indicating) I bought after I moved there, but I have been there about thirty-seven years last Spring. This twenty-five acres I bought a few years after I moved there; I cannot tell you just how many but it was not very long.

Q. 21. Who did you buy it from?

A. I bought that twenty-five acre lot from William Henry Herring.

Q. 22. About April 11th, 1872?

A. Well, I was there two or three years before I bought it; I could not tell you just how long; I could not testify to a certainty about that.

And upon cross-examination by Mr. SINCELL, the witness testified as follows:

Cross-examination:

Q. 1. That chestnut corner which you pointed out to Mr. Monroe does not stand in any state line that you know of?

A. No, sir; I do not believe it does—I know it don't.

Q. 2. And you do not know what state line it is that runs
3206 nearest to that tree, do you, through your property?

A. Why, it is owing to what you recognize as the state line. Here are three or four lines, but what we call the Maryland line—where we pay taxes to—do you call that the state line? Is that the line you want to know?

Mr. PRICE: That is what we call it, but Mr. Sincell does not.

Mr. SINCELL:

Q. 3. I asked you which state line runs nearest to that chestnut tree?

A. That is a little hard for me to tell for I never measured either way.

Q. 4. I did not ask you the distance; I asked you which one?

A. I do not know which is the closest; it is right betwixt the Michler line—is that what you call this?

Mr. SINCELL: Yes, sir.

WITNESS (continuing): and the old line. Are those the only two you are talking about? Now, here is another middle line right between them.

Q. 5. What line is that?

A. I do not know; some one ran it several years ago and stuck a stake in my bars.

Q. 6. How many years ago?

A. I could not tell you.

Q. 7. Do you know where Mr. Monroe ran his line through there in this case?

A. I do not know; he stayed all night with me but I did not go with him.

Q. 8. Did he run it East or West of the chestnut?

A. I do not know that; I went and showed him the chest-
3207 nut but I do not know which way he ran.

Q. 9. You did not see where he ran it?

A. No, I did not see where he ran.

And upon redirect examination by Mr. PRICE, the witness testified as follows:

Redirect examination:

Q. 1. About 1896 did Mr. Monroe run through there?

A. He has been through there twice. Several years ago he was through there but I do not know the year; I paid no attention to it.

Q. 2. Some ten or twelve years ago?

A. I would guess it would be some place along there but I could not tell you just the year or anything near the year because I paid no attention to it; but he stayed all night with me—him and some other man; I think he has been all night with me twice.

E. G. ALBRIGHT, a witness produced on behalf of the State of West Virginia, having been first duly sworn, deposes and says as follows:

Deposition of E. G. Albright.

Examination by Mr. PRICE:

Q. 1. Please give your name?

A. E. G. Albright.

Q. 2. And your age?

A. Fifty-six.

Q. 3. Your place of residence?

A. Cranesville, Preston county, West Virginia.

Q. 4. What is your occupation?

A. Farming.

Q. 5. Do you own any land in that part of the county?

3208 A. Yes, sir.

Q. 6. How much and where is it situated?

A. I own about 230 acres—well, it is about 181 acres, situated

West of Cranesville just one mile, or almost West or Southwest from Cranesville; we always call it West of Cranesville.

Q. 7. How long have you owned this tract of land?

A. Thirty-two years, or the principal part of it; I have owned part of it thirty-two years.

Q. 8. Do you live on it?

A. Yes, sir.

Q. 9. Have you lived on it during all that time?

A. Yes, sir; and I lived on part of it—my father owned a portion of the land and I lived with my father adjoining, on part of the land for upwards of forty years.

Q. 10. You are acquainted with Mr. Julius K. Monroe, the surveyor in the case?

A. Yes, sir.

Q. 11. Was he at your place last Spring during the month of April?

A. Yes, sir.

Q. 12. At that time did you point out to him any of the corners of your land?

A. Yes, sir.

Q. 13. What corner?

A. Well, there were different corners. Now, my land consists of several tracts and it is all a portion of several large tracts, and I pointed out corners and also corners of these old original tracts which were in sight of my land which the record does not show.

Q. 14. Did you point out a common corner between your land and the land of Henry Albright?

3209 A. Yes, sir.

Q. 15. How do you know that to be a corner?

A. Well, you mean now the tract between me and Henry Albright?

Mr. PRICE: Yes, sir.

WITNESS (continuing): Now, I own a part of the same tract; there was a tract laying in there of four hundred and some acres; it was bought of my father; we call it the Crane tract but it was originally owned by Jeffers, and that tract was cut in three parts and two of my brothers got a portion of it and William Engle bought a part of it—thirty four acres—and I bought the tract from Mr. Engle. My deed of course calls for that corner and I was also along when that line was run—when it was divided.

Q. 15. Is that a corner of any of the original tracts?

A. That is not a corner of any of the original tracts; no, sir.

Q. 16. Did you point out to Mr. Monroe any corner of any original tract there?

A. Yes, sir.

Q. 17. Please state what corner?

A. Well, there was a corner, as I said, which was known on the plat as the Jeffers tract adjoining this Jeffers tract which included this thirty-four acres which I also own, which formerly belonged to my grandfather. It was an old survey and my father bought it and then I bought a portion of it, and that was one corner that I

showed him; and also there was another tract of land lying across the road. It is on the record now as the William and Charles Jeffers tract, but I do not know what the original name of it was. I have a portion of that 30¼ acres of that tract. I also showed him the corner of that tract between that original tract and the land
3210 owned by my grandfather; that was another corner I showed him, but there is not any corner there now. The corner should stand or did stand right in a corner where I have my watering trough; it has been a watering place for a number of years and the cattle have tramped around it. I can remember one stump that stood there but I cannot remember when the tree stood there. And then there was another corner I showed him; it is the East corner of the same tract. It had been the land of Belle Albright, but now is owned by Obadiah Matheney. A good portion of this land where I own was known as part of the Summer's tract. I do not know what Summers but I believe it was John Summers.

Q. 18. Do you know what the original tract of thirty and a fourth acres belonged to?

A. I am not sure; I can trace it back a good ways but I am not sure about it. I can trace it back to three or four different parties. Did you say the thirty-four or the thirty acres?

Mr. PRICE: The thirty and a fourth.

A. The thirty and a fourth; well, I am not sure about that.

Q. 19. Did you knew of a tract known as the John Crane 491 acres?

A. John Crane owned many tracts in there and there is the trouble; but this tract of the thirty and a fourth acres was owned at one time by John Crane, and as I stated a while ago the tract of thirty and a fourth acres was owned by John Crane at one time but after Mr. Jeffers owned it.

Q. 20. It was owned by John Crane at one time?

A. That is what I learned. Well, he had nearly all of the land in that country at one time—at some time or other.

Q. 21. Do you know where a line was run by W. McCulloh Brown, representing the State of Maryland, a few years ago? Do
3211 you know where it was run?

A. Yes, sir.

Q. 22. Well, where was it run with reference to your land?

A. Well, it took about, I suppose, an acre off of the corner of my land, on the East corner; it would be the East corner and the East side.

Q. 23. Was the body of your land East or West of that line?

Q. Well, what I mean by the corner is this: Now, this side of my land runs here, (indicating), and then it runs out with the road I suppose fifteen rods, and then it runs almost North, and this line came across here (indicating) and just took that corner off of the East side of my land.

Q. 24. Leaving the main body of your land on which side of the Brown line?

A. Why, the West side; I would suppose from a half to an acre right off of that corner, (indicating).

Q. 25. Had you ever heard of the Maryland line being along there before that line was run?

A. That was the first time; I did not know I ever owned any Maryland soil.

Q. 26. How far did you think you were from the Maryland line?

Question excepted to by counsel for the State of Maryland.

WITNESS: You mean how far did I suppose I lived from the Maryland line?

Mr. PRICE: Yes, sir.

A. Well, that might be a question. It has been a question in dispute. You know we have two lines there—what we call the old line and the other is the Michler line. The distance there—I would not just know what that distance is, but I would suppose
3212 it is somewhere near a half a mile between the two lines.

Q. 27. How far is your land from the Michler line?

A. My land from the Michler line would be about a mile and a half.

Q. 28. West?

A. West, yes, sir.

Q. 29. And how far from the old Maryland line?

A. Well, I would suppose about two miles. It may not be quite two miles but I would suppose it is about two miles.

Q. 30. In what state and county do you pay taxes and vote?

A. In Preston county, West Virginia.

Q. 31. And the other people living West of the Michler line, what state and county do they vote in?

A. West of the Michler line they all pay in Preston county, West Virginia, and a number of them has been paying to what we call the old line. I have been road surveyor for sometime and I always worked the roads to the old line, and in some places Maryland worked to the Michler line; but there is a portion of the road that has always been worked to the old line.

Q. 32. You say that Maryland has worked to the Michler line?

A. Only one road, but the main road we always worked. I have worked the roads for about ten years and I always worked to the old line and my hands between all worked there to the old line—the hands working in the precinct.

Q. 33. In what case was it that Maryland worked as far over as the Michler line and when?

A. They always kept it up all the time I was in. Of course if you want me to locate the place I can; it is down what we would call on the road leading from Cranesville to Brownings Dam or Lake. There is a road leading there and by some means they always
3213 work it up to the Michler line, and that is the only road that they have worked, to my recollection, to the Michler line.

Q. 34. Who was the road surveyor down there?

A. Well, there have been different parties. You mean in Maryland?

Q. 35. That did this work over there?

A. Well, Mr. Thomas Browning, during his lifetime, worked the

road, and Mr. Samuel Teats and a number of others. Probably one would work it one year and then another another year. They generally worked it up there and I think just thought if they worked it some one else would not have to work it; I did not have to work it.

Q. 36. Is that the road that runs to John Elza's place?

A. The place where John Eliza lives at present? No, sir.

Q 37. Did it run to the place where John Eliza formerly lived?

A. Yes, sir.

Q. 38. Well, he claimed to be under the jurisdiction of Maryland, didn't he?

A. Yes, sir.

Q. 39. And he was about the only, man along there that did, wasn't he?

A. Well, yes, sir. Well, there was another party between the two lines—Mr. Ethbell Falkenstine; and there was others; Michael Feather lived where John Elza now resides on the John Crane farm; that was between the two lines. He always paid his taxes in West Virginia—that is, for the land that laid this side of the old line. He had land lying on both sides and for the land lying beyond the old line he always paid in Maryland; but on this side he always paid the taxes for his personal property and worked the road; and J. W. Feather worked there while he was road supervisor and he
3214 always voted and paid his taxes in West Virginia; and Ethbell Falkenstine was the only man that claimed his residence in Maryland and he voted there, and he laid between the two lines but nearer to the old line than he did to the other.

Q. 40. Do you know why it was that Ethbell Falkenstine claimed to be in Maryland?

A. Well, no, I could not say, only I have heard him frequently speak of the taxes in West Virginia being so high and he didn't like our road law; but now Mr. Falkenstine lived, as I stated, between the two lines and he lived—well, if I had a piece of paper I could represent that.

Mr. PRICE: That won't do any good; you will have to explain it so as to be understood on the record.

WITNESS (continuing): Well, the road running from Cranesville—I do not know whether I can just explain it the way I want to or not. Now, there is a portion of the road running right by his house that was between the two lines—I suppose there was about a half a mile of it—and he lived to the left of the road. The road formed a bend and it crossed the creek before it came to the old line. Well, I had warned him in on the road several times but he would not work. I asked him why and he said he belonged to Maryland. "Well," I said "if you belong to Maryland your road belongs to Maryland." "No," he said "that is a Virginia road." "Well," I said "if it is a Virginia road you are surely in Virginia because you live on it." So it was two successive years that he did not work. Well, I concluded if he didn't work I would not work his road so I just told the men when we got to the Michler line we would walk across to the old line; then it made a turn to the West and I was obliged to work it

as it came in my territory about half a mile; and so we walked
3215 over it and he notified the State's attorney that I did not work his road and the State's attorney notified me that I should work the road and compel them to work it; so I told Mr. Falkenstine we would strike a compromise, now, and if he would work that road we would call it square; so he worked it and after that he always worked it.

Q. 41. Now, Mr. Albright, that land that Mr. Falkenstine claims, was it always assessed in Maryland and did the people living on it claim Maryland as their home?

A. Well, no, I cannot say they did. It was always kind of mysterious. Now, at one time Mr. Falkenstine had a tenant and he lived in the same house that Mr. Falkenstine did, or I can say that he lived in the East room of the house, and he claimed his residence in West Virginia and Mr. Falkenstine in Maryland; and it appeared to be a matter of choice between the two lines; some claimed it to the Michler line and others to the old line but people beyond the Michler line or West of the Michler line always claim to the old line.

Q. 42. You say some claim to the Michler line. Now, who do you mean?

A. Well, now, I mean there was Mr. Falkenstine, was one, and then his son after he became of age—he refused to work the road—and Mr. Elza always claimed his residence in Maryland. I believe those were the only ones in that section that I know of.

And upon cross-examination by Mr. SINCELL, the witness testified as follows:

3216 Cross-examination:

Q. 1. Did you know Joseph Feather?

A. Well, there were three Joseph Feathers that I knew.

Q. 2. Old Mr. Joseph Feather?

A. Yes, sir.

Q. 3. The father of Michael Feather and Mrs. Ethbell Falkenstine?

A. Yes, sir.

Q. 4. Didn't Joseph Feather sell the Falkenstine place to them?

A. Yes, sir; I think he did; I know he did.

Q. 5. Didn't Michael E. Feather derive his title also from his father, Joseph Feather?

A. Yes, sir.

Q. 6. You know that Joseph Feather bought that land from John Crane, do you not?

A. Yes, sir.

Q. 7. And don't you know that John Crane acquired title to that property through "The Diadem" title?

A. I do not know anything about that.

Q. 8. You have heard of "The Diadem" title, haven't you?

A. Oh, yes.

Q. 9. Do you remember when Mr. W. McCulloh Brown located "The Diadem" tract, in this case?

A. No, I do not know anything about the line only where it ran to my place; I do not know the way you consider that line you are speaking of.

Q. *48*. I am speaking of the lines generally of the tract?

A. No. Well, I know of one that I have seen them run. Now, you mean the Diadem tract?

Q. 11. Yes, sir; the whole tract.

A. Well, I seen them running through my place. They
3217 were running and that is all I know about it; I knew the line was there somewhere but I never knew where it was and I said if I had known when he was running it I would have seen where it was.

Q. 12. Did you know that that was a line of "The Diadem" tract that ran through your place?

A. I knew that. I knew some of the tract of "The Diadem" and often heard father speak of it but I never knew where it was.

Q. 13. You also know in the same way that John Crane at one time owned the entire Diadem tract?

A. No, sir; I did not know that.

Q. 14. Is it not a fact, within your knowledge that the Falkenstine place was assessed and taxed in Maryland?

A. Well, now, I suppose it was, because he paid his taxes in Maryland?

Q. 15. And is it also a fact within your knowledge that the Michael Feather place was assessed and taxed in Maryland?

A. I do not think so.

Q. 16. Do you know Mr. B. C. Feather, son of Michael Feather?

A. Yes, sir.

Q. 17. Don't you know that B. C. Feather has been assessed for land in Maryland and paid taxes on it in Maryland?

A. Well, I do not know it. Now, all I know about M. E. Feather is that several times—sometimes we would come here to the county seat and pay our taxes, and I will say at least twice I remember of paying M. E. Feather's taxes here.

Mr. PRICE: Was that Michael E. Feather?

A. Michael E. Feather's taxes. We would lift his tax receipts.

Mr. SINCELL:

Q. 18. Did you know that you were paying taxes for him on this land that we have been speaking of?

3218 A. I knew that there was land assessed, but now as to the entire tract I could not say. I know it was his land because if I would hand him his receipt he would always look and see what his taxes were—what his personal property was assessed at and his land. I could not say it was his entire tract; I do not think it was; as I say, a portion of this tract laid across the old line.

Q. 19. The road you have spoken of leading from Cranesville to Browning's Dam—that is the main road leading out of Cranesville into Maryland, isn't it?—I mean in that section?

A. No, we do not consider it that; we consider the main road as the one leading down by where Michael Feather lived—the main road now.

Q. 20. That is the Salt Block road?

A. No, sir; the road there to Sang Run or to Friendsville or to Oakland. Well, this one running down to the dam—the one I speak of—lands only towards Oakland, while this other road leads to different places, and we consider the other road the main leading road.

Q. 21. That is the road leading direct from Cranesville to Oakland?

A. We consider it so; yes, sir.

Q. 22. It is the main, direct and shortest route?

A. Yes, sir; but in our country there is about six months out of the year you cannot travel it. It always drifts shut in the Winter time.

Q. 23. And that is the road the Maryland people have always worked to the Michler line?

A. That is the road they have worked to the Michler line but they never have worked the other.

3219 And upon redirect examination by Mr. PRICE, the witness testified as follows:

Redirect examination:

Q. 1. This son of Michael Feather that Mr. Sincell has asked you about, hasn't he built a house just East of the old line?

A. Just East, yes, sir; he had to build the house on the Maryland side.

Q. 2. And a part of this Feather's land ran over into Maryland?

A. Yes, sir; a part of what we term the old John Crane tract where Joseph Feather bought and sold to his two sons. I do not know the amount but I would suppose there were one hundred acres of that land lying across the old line.

Q. 3. And it is on that part that this son of Michael Feather lives?

A. He has lived there but he does not now. He had lived there and had owned and had bought that tract of land and then built there.

Q. 4. Now, if he paid any taxes in Maryland was it on that part that he lived on East of the old line?

A. East of the old line, and I suppose his father also did; I do not know that to be a fact but I know and I am sure that he paid taxes on the land, and a portion of that tract in West Virginia, but I could not say all,—I suppose to the old line.

Q. 5. Ethbell Falkenstine's wife was a Feather, was she?

A. Yes, sir.

Q. 6. A daughter of whom?

A. Of Joseph Feather.

Q. 7. And a sister of Michael Feather?

A. Of Michael Feather.

3220 Q. 8. Now, when Joseph Feather owned this whole body of land, did he pay taxes on any part of the land that lies West of the old line in Maryland?

A. I could not tell you; I could not say.

Q. 9. Isn't it a fact, Mr. Albright, that up to the time that Ethbell

Falkenstine's wife got her part of the land, it had all been assessed and taxes paid on it in West Virginia?

A. Well, now, you see that the Ethbell Falkenstine tract and the tract belonging to Michael E. and J. W. was always a separate tract.

Q. 10. Was it?

A. Always a separate tract; it was not included in what we term the old John Crane farm, the tract of land which adjoins it, but it was a separate tract and Joseph Feather bought it separately.

Q. 11. Do you know who he bought it from?

A. I think he bought it from Smith Crane but bought it at a different time.

Q. 12. Didn't Joseph Feather buy it under a West Virginia title or a Virginia title?

A. Well, now I could not say that.

WESLEY DEBERRY, a witness produced on behalf of the State of West Virginia, having been first duly sworn, deposes and says as follows:

Deposition of Wesley Deberry.

Examination by Mr. PRICE:

Q. 1. What is your name?

A. Wesley Deberry.

Q. 2. Your age?

A. I am forty-six past.

3221 Q. 3. And your place of residence?

A. Terra Alta, Preston county, West Virginia.

Q. 4. And your occupation?

A. I am a farmer, merchant and surveyor.

Q. 5. Your deposition has been already taken in this case of the State of Maryland against the State of West Virginia, hasn't it?

A. Yes, sir.

Q. 6. In that deposition you stated that you own certain lands lying along the Maryland line South of the Baltimore & Ohio Railroad?

A. Yes, sir; I suppose I did; I do own lands there.

Q. 7. You owned at one time the land lying immediately South of the railroad, didn't you, along the Maryland line?

A. Yes, sir; adjoining the railroad on the South side of it.

Q. 8. Do you know a tract of land known as the White place lying South of the Baltimore & Ohio Railroad?

A. Yes, sir.

Q. 9. Who owns it now?

A. I believe Charlie White's wife and Estella White own it now. It originally belonged to Garrett T. White but I think it belongs to Estella White now.

Q. 10. Who owns the tract of land lying South of the White place along the Maryland line?

A. Why, I own that.

Q. 11. Is that known as the Fredlock land?

A. Yes, sir. I own only a portion of the Fredlock land now—the Eastern portion of the Fredlock land—I sold a portion of it.

Q. 12. Do you remember of Mr. Julius K. Monroe, the surveyor in this case, being over on those lands last Spring?

3222 A. Yes, sir.

Q. 13. At that time did you point out to him a corner of this Fredlock tract of land?

A. Yes, sir.

Q. 14. Which corner?

A. The Southeast corner.

Q. 15. What did you point out as the Southeast corner?

A. A stone pile.

Q. 16. Where is that with reference to the Maryland line as you claim it?

A. Well, it is on the old Maryland line known, I believe, as the Deakin's line.

Q. 17. Why do you claim that stone pile as the corner of your land?

A. Well, my deed calls for that as being a corner in the tract of land; then from the line that extends North and South from that, there is right smart of evidence in regard to its being a corner on that line—a corner over there. I say there is evidence that points to that—the degrees and the distances point to that as being a corner. It is not only the marks but there are pointers that point to that corner as evidence of that being a corner. We determined the point partly by some other point and the degrees and distances point to that as part of the evidence that that is a corner.

Q. 18. Well, now, was there any fence on that line running North from that corner?

A. Well, I am not positive as to that—that is, on that piece of land or further on on that piece of land; I do not know that the fence runs quite to the line. Well, the fence is almost gone through there. There was one clear through there but it is grown up and

3223 there is an old fence through the woods there, and stone piles as marks of an old clearing there, but that has been cleared for twenty five or thirty years and the fence is very poor now. There are still old rails there in the woods but then it is grown up a good deal.

Q. 19. Does that fence correspond with the line on which the stone pile is?

A. I do not think it runs quite to the old line—the Deakin's line —or that field that was cleared there.

Q. 20. Now, what other points on that Deakin's line, if any, did you point out to Mr. Monroe?

A. This corner of the Bacorn land?

Q. 21. Which corner of the Bacorn land?

A. The Southeast corner of the Bacorn survey.

Q. 22. How does that correspond with the White land?

A. Well, it is on the same line with the White, and the Fredlock land runs with it.

Q. 23. Well, is that Southeast corner of the Bacorn also a corner of the White land?

A. Yes, sir.

Q. 24. The Northeast corner of the White land?

A. Yes, sir; it is the Northeast corner of the White land.

Q. 25. Now, do you know the Southeast corner of the White land?

A. Yes, sir; I know the Southeast corner of it.

Q. 26. Well, now, how does the Southeast corner of the Fredlock and the Southeast and the Northeast corner of the White and the Southeast corner of the Bacorn correspond with reference to being in the same line?

A. They are all on the same line, I think.

3224 Q. 27. What line is that recognized as?

A. As the old Maryland line—Deakin's line.

Q. 28. Will you look at the map of Mr. Julius K. Monroe in this case, and state in what way these corners that you have pointed out—for instance the Southeast corner of the Fredlock tract is designated?

A. The Southeast corner is "D ½."

Q. 29. In red letters?

A. Yes, sir; in red letters.

Q. 30. How is the Southeast corner of the White tract designated?

A. With "D1.".

Q. 31. And the common corner between the White and the Bacorn; how is that designated?

A. "D 2."

Q. 32. You are a surveyor yourself, I believe, Mr. Deberry?

A. Yes, sir.

Q. 33. Have you run any of these lines?

A. Yes, sir; I have traced those lines through.

Q. 34. Now, looking at Mr. Monroe's map in this case, what have you to say with reference to whether those tracts and those points which you have shown are correctly located on that map?

A. Well, I think they are fairly correct as far as I can see by just looking at them. I do not see any error in the laying off of it.

Q. 35. This Fredlock tract—what was it a part of?

A. It was a portion of the Francis and William Deakin's survey of 908 acres.

Q. 36. And the White tract—what did that come out of?

A. That was a portion of the same survey. It was pat-

3225 ented, I think, by Francis and William Deakins.

Q. 37. And the Bacorn tract—how many acres was there in it?

A. About five hundred acres, I think. I think that was patented in 1793, and I think I have a copy of the patent somewhere.

Q. 38. Do you know who was the patentee?

A. John Bacorn, I think.

And upon cross-examination by Mr. SINCELL, the witness testified as follows:

Cross-examination:

Q. 1. Did any one ever point out that line to you as the old Maryland or Deakin's line?
A. Yes, sir.
Q. 2. Who so pointed it out?
A. Well, Uncle Joseph Deberry and Garrett T. White, and I think John Connell—the old gentleman.
Q. 3. They were land holders along that line?
A. Yes, sir; they were land holders on both sides Connell on the East side and Deberry and White on the West side.

LLOYD DAWSON, a witness produced on behalf of the State of West Virginia, having been first duly sworn, deposes and says as follows:

Deposition of Lloyd Dawson.

Examination by Mr. PRICE:

Q. 1. Please give your name?
A. Lloyd Dawson.
Q. 2. Your age?
A. I am fifty years old.
3226 Q. 3. Your residence?
A. Union District, Preston county, West Virginia.
Q. 4. And your occupation?
A. I am a farmer and a manufacturer of wool.
Q. 5. Your deposition, I believe, has already been taken in this case, Mr. Dawson?
A. Yes, sir; you took my deposition once.
Q. 6. You own a tract of land in Union District, Preston county, adjoining the Maryland line?
A. Yes, sir; as one of J. C. Dawson's heirs.
Q. 7. Is it the tract of land that formerly belonged to J. C. Dawson?
A. Yes, sir.
Q. 8. Was Mr. Julius K. Monroe upon your land in the Spring of 1907,—the surveyor in this case?
A. Yes, sir.
Q. 9. At that time did you point out to him any of the boundaries of your land?
A. Yes, sir.
Q. 10. What did you point out?
A. I pointed out to him a white oak tree on the Southeast corner of my land.
Q. 11. Where does that tree stand with reference to what you claim as the Maryland line?
A. It is supposed to stand on the line.
Q. 12. In your testimony given before in this case you were asked "Are you acquainted with the Eastern boundary of your land along

the Maryland line as claimed by your father and yourself?" and your answer was, "Yes, sir; there are two points; we claim
3227 from the tree in the Maryland line to the forks of the creek."

Please state whether the tree which you pointed out to Mr. Monroe is the tree mentioned in your former answer?

A. Yes, sir; that would be the same tree and standing on the same line.

Q. 13. Now, what kind of a tree is that?

A. Why, it is a white oak tree, and pretty tall. I took you to it and showed it to you, do you remember?

Mr. PRICE: Well, I do not know that I do, but I want you to describe it so the court will understand. You are talking to the court, now, and not to me.

WITNESS (continuing): Well, it is a tree about eighteen inches in diameter and pretty tall.

Q 14. Why did you point that out as a corner of your land on the Maryland line?

A. Why, it is one of the corners of our farm—the division corner between my farm and the farm now owned by H. H. Beckman.

Q. 15. How long have you known that corner and recognized it as such?

A. Ever since I can remember.

Q. 16. Whom did you learn from that it was a corner?

A. From my father.

Q. 17. Did he live upon this land?

A. Yes, sir.

Q. 18. Is he dead?

A. Yes, sir; he is dead.

Q. 19. How long did he live on the land?

A. He bought it in 1846, and moved there March 13, 1847, and he lived there until he died in 1884.

3228 Q. 20. Now, you were asked in your former deposition, "Is there a fence along your line where you claim it, along the Maryland line?" and your answer was, "Yes, sir."

A. Yes, sir; there is a fence there.

Q. 21. Now, does that fence run to this tree that you pointed out to Mr. Monroe?

A. Yes, sir.

Q. 22. Is there a fence along the Eastern boundary of H. H. Beckman's land?

A. Yes, sir.

Q. 23. How does that fence correspond with your fence with reference to being in the same line or not?

A. They are in the same line as near as they can be made.

Q. 24. Do you know whether that oak tree that you pointed out to Mr. Monroe has any ax marks on it?

A. Yes, sir; there are ax marks on the tree.

Q. 25. Recent or ancient?

A. They are all old; I do not think any new marks have been made on it since I can remember.

Q. 26. Is it marked as a line or a corner tree?

WITNESS: What do you mean by that?

Q. 27. On what sides are these marks?

A. I do not remember exactly, but I think it is marked South and North and West—on three sides—as a corner of three tracts, you know—three corners.

And upon cross-examination by Mr. SINCELL, the witness testified as follows:

3229 Cross-examination:

Q. 1. The marks on this tree would indicate that it was a corner of adjoining tracts of land, would it not?

A. Yes, sir.

Q. 2. There is nothing on the tree to indicate that it marks the boundary between the two states, is there?

A. I do not know as there would be; I do not know what you mean by that.

Q. 3. The tree is simply marked on three sides?

A. I think it is marked on three sides.

Q. 4. North, South and West?

A. Yes, sir.

Q. 5. Do you know where Mr. Monroe ran the line for the State of West Virginia, in this case, along in 1894?

A. Why, I know one place. He came pretty near passing my place before I knew he was in there.

Q. 6. Well, is that point in this line that you have just been speaking of?

A. No, sir.

Q. 7. Where is it with reference to this line—East or West of it?

A. East.

Q. 8. How far East? About how far East of the line that you have been speaking of?

A. Well, now, it has been so long since I went down there—well, I can only give you an approximate answer.

Q. 9. Well, give us that.

A. I suppose it is fifteen rods.

Q. 10. Have you ever known of a line to be run through
3230 there West of this line that you have been speaking of, as a boundary between the states?

A. Well, there is a line running West of the Deakins line through my place known as the Michler line.

Q. 11. About how far West is that line?

WITNESS: Of the Deakins line?

Mr. SINCELL: Yes.

A. The best answer I can give you and as near to it as I can come is that Dan Chisholm surveyed two lines, and as near as I remember it was eight rods on the South side and nine rods on the North side?

Q. 12. You mean eight rods at your South line and nine rods at your North line.

A. Yes, sir.

Q. 13. West of what you call the Deakins line?

A. Yes, sir.

Q. 14. Have you known or do you know of any other lines that have been run through there as marking the boundary between the two states?

A. No, I do not know of any other lines. There are no lines running through my place but those two.

Q. 15. Do you know of any other lines running through that section of the country?

A. Well, Mr. Brown ran one West, entirely on my place.

Q. 16. That was the line that he ran in 1897, in this case?

A. Yes, sir.

And upon redirect examination by Mr. PRICE, the witness testified as follows:

3231 Redirect examination:

Q. 1. Did you ever know of any line to be run as a state line where Mr. Brown ran it, before he ran it?

A. No, sir.

A. J. THOMAS, a witness produced on behalf of the State of West Virginia, having been first duly affirmed, deposes and says as follows:

Deposition of A. J. Thomas.

Examination by Mr. PRICE:

Q. 1. Please give your name?

A. A. J. Thomas.

Q. 2. And your age?

A. Twenty-nine.

Q. 3. And your place of residence?

A. Maryland; Garrett county.

Q. 4. And your occupation?

A. Farming.

Q. 5. In what part of Garrett county do you live, Mr. Thomas?

A. I guess we would call it—well, I do not know in what part of the county I live only I just live adjoining Grant District, in West Virginia. My post office is Fearer, Maryland.

Q. 6. How far do you live from the Maryland-West Virginia boundary line?

A. Well, I suppose it would be twenty rods or something like that; I never measured it and do not pretend to be correct.

Q. 7. Do you own land on one or both sides of that line?

A. I own lands on the West Virginia side.

Q. 8. Do you own any land on the Maryland side?

3232 A. I do not.

Q. 9. Whose land do you live on?

A. I live on my mother's land.

Q. 10. Who was your father?

A. Alexander Thomas.

Q. 11. Your father is dead, is he?

A. He is.

Q. 12. How long has it been since he died?

A. Eleven years, I think, if I remember right.

Q. 13. Did your father own land along that boundary line, on the West Virginia side?

A. Well, he did not lately; he may have owned land there when I was a small boy.

Q. 14. At the time of his death he owned land on the Maryland side, did he?

A. No, sir; he did not own any land at the time.

Q. 15. Well, your mother did?

A. My mother did.

Q. 16. Did your mother buy that land or inherit it?

A. Well, she bought it.

Q. 17. How long has she lived on it?

A. Well, I would suppose something like fifteen years.

Q. 18. Now, you yourself bought some land on the West Virginia side?

A. I did but not running with the line; it just corners on the line.

Q. 19. From whom did you purchase it?

A. I bought it from Charlie Thomas.

Q. 20. And where did he get it?

3233 A. He bought it from William Fearer.

Q. 21. Is that part of the land known as the Fearer tract?

A. It is a part of it; yes, sir.

Q. 22. Did you point out any corner of that tract of land to Mr. Julius K. Monroe, surveyor in this case, last Spring?

A. I did.

Q. 23. What corner did you point out?

A. I showed him my corner—that corner to the tract known as the G. D. Evans property, right on this line.

Q. 24. Is that on the Maryland line?

A. Yes, sir.

Q. 25. What object did you point out?

A. Just where the fence came down. There was a fence came down; one fence runs one way and one the other and they corner and that is the way I showed him.

Q. 26. How do you know that is a corner?

A. Well, I was told it was a corner when I bought it and my deed calls, if I mistake not, for a red oak stump at the G. D. Evans corner, but the stump I failed to find; and I never could figure out where that corner was until Mr. Monroe was down and asked if the stump was there and I told him it was not but that was the corner that the parties told me was the corner when I bought it.

Q. 27. How long has that fence been up there?

A. Well, it has been there I would suppose fifteen years. It runs from my corner to the county road I would suppose fifteen rods on this old Maryland line.

Q. 28. Now, does your mother's land lay opposite that on the Maryland side?

A. My land and my mother's land—what she has in West

3234 Virginia—is off of the Joseph Fearer tract, and there is seven acres of a corner that belongs to my mother and her line runs

with the old line—the old Maryland-West Virginia line. Seven acres were cut off. My fence bears off enough to take off seven acres when it gets to the back end of the farm. I do not know just what variation that would make. It is supposed to run out there along the line—out from the road from where G. D. Evans and I corner.

Q. 29. Now, your mother's land in Maryland, does it lie opposite this point of your land that you pointed out to Mr. Monroe?

A. It lies East of it.

Q. 30. And the seven acres that she owns in West Virginia lies in what direction from your land?

A. Well, as I told you part of it lies East.

Q. 31. And kind of lies between you and the state line?

A. Yes, sir.

Q. 32. Well, now, does your mother pay taxes on that seven acres in West Virginia or Maryland?

A. She pays it in West Virginia.

Q. 33. And the land that lies East of this point that you showed Mr. Monroe, belonging to your mother, in what state does she pay taxes?

A. In Maryland.

Q. 34. And in what state do you pay taxes on this Fearer land?

A. In West Virginia.

Q. 35. How long has that line there been recognized as the state line?

A. Ever since I can remember; I have never known any other line but that.

Q. 36. What is the reputation amongst the people in that
3235 neighborhood, and has it been since you have known anything about it, as to where the state line is?

A. It has been among the people in general—everybody that I have known—claimed to be where I told him—at that fence. The people come from West Virginia sometimes to get married in Maryland; they come to our house sometimes and sometimes they stop in the road in front of the house and get married, and sometimes they will go from Maryland up into Virginia to get married and they would cross this fence.

Q. 37. Is there any road running across the State line in that neighborhood?

A. There is.

Q. 38. Where is that road?

A. It is what is called the Selbysport road, leading to the Glade Farms, I believe, is what they always call that road.

Q. 39. What direction does it run with reference to the state line?

A. It just crosses it.

Q. 40. How far is that from your place?

A. The road runs just in front of my yard where I live now—just a couple of rods from the house.

Q. 41. Now, under the authorities of what state is that road worked?—and how?

A. It is worked up as far as this fence that I have described by

the Maryland authorities, and on the upper side down to the fence by the West Virginia authorities.

Q. 42. That is on the West?

A. West by the West Virginia authorities; on the East by the Maryland authorities.

3236 Q. 43. Has that always been so since you have known it?

A. Yes, sir; since I have known it.

And upon cross-examination by Mr. SINCELL, the witness testified as follows:

Cross-examination:

Q. 1. Do you know where Mr. Monroe ran the line for the State of West Virginia, in this case, in 1894?

A. I do not.

Q. 2. Did you ever hear of the Michler line?

A. I believe not—until I came here.

Q. 3. You never did?

A. I never did. I heard of a line being run through there but I do not know it to be a fact. I saw a stake there once and they said there was a line run there by someone but I do not know it to be a fact.

Q. 4. Do you know where the Michler monument is, on the Pennsylvania line?

A. I do not.

Q. 5. Do you know where the old mound is on the Pennsylvania line?

A. No, sir.

Q. 6. How far are you acquainted with the line that you have been talking about?—I mean North and South from the point you have described?

A. Well, I am not acquainted with it very far; about across two farms.

Q. 7. How far South do you live of the Mason and Dixon line?

WITNESS: Which line is that?

Mr. SIMCELL: The Pennsylvania line.

WITNESS: The Pennsylvania line?

3237 Mr. PRICE: The Pennsylvania State line.

WITNESS: Where Pennsylvania and Maryland corner?

Mr. SINCELL:

Q. 8. Yes I asked you how far you lived South of that line—of the Pennsylvania State line?

A. I could not just state.

Q. 9. Can't you tell us about how far?

A. I do not know where it is; if I knew exactly where it went through there I could tell you.

Q. 10. You do not know then just where it goes through?

A. No, sir; I do not.

And upon redirect examination by Mr. PRICE, the witness testified as follows:

Redirect examination:

Q. 1. What two farms do you allude to?
A. The farm that I was just describing, of my mother's, where it runs along; and my brother owns a farm now formerly owned by my father on the South side of this road.
Q. 2. That is South of you?
A. Yes, sir.
Q. 3. Does he join you?
A. He does; that is, he joins me but not with that tract there. He also bought on the West Virginia side and that side joins me.
Q. 4. Whom did he buy from on the West Virginia side?
A. George Frazee.
Q. 5. Well, is that the G. D. Evans tract?
A. It is a part of it.
Q. 6. Well, now, the Eastern boundary of this G. D. Evans tract—how does it correspond with this corner and line which you have spoken of as the state line?
3238 WITNESS: Do I understand you to ask me how this lower part of the G. D. Evans farm runs with this old line?
Mr. PRICE: Yes, sir.
A. The old line runs up to this land of G. D. Evans.
Q. 7. The old Maryland line constitutes the Eastern boundary of the G. D. Evans tract: is that right?
A. Yes, sir; that is right, so far as I know.
Q. 8. Does your brother own the land on the Maryland side opposite the G. D. Evans tract?
A. He does.
Q. 9. And pays taxes on that in Maryland?
A. He does.
Q. 10. And where does he pay taxes on the G. D. Evans tract?
A. In West Virginia.
Q. 11. Which tract does he live on?
A. On neither one.
Q. 12. Has he a tenant on the Evans tract?
A. He has not; he has a tenant on the other tract.

And upon re-cross-examination by Mr. SIXCELL, the witness testified as follows:

Recross-examination:

Q. 1. Did you ever see the Eastern boundary of the Evans tract run by a surveyor?
A. Well, I saw it but I was not close to where they were running it. I saw them start on the line at my corner and that is what they told me they were doing. I was busy and did not go to them.
Q. 2. Did you follow them up?
A. I did not.

Q. 3. Then, how do you know that the old line that you
3239 have spoken of constitutes the Eastern boundary of the Evans tract, if you have never seen the Evans Eastern line run?

A. Because my father owned the land on the Maryland side and he always told me that that was the line through there and that G. D. Evans owned on the other side.

There not being time to complete these depositions the further taking of the same is adjourned and continued until tomorrow, July 24th, 1907, at 9 o'clock a. m.

NEIL J. FORTNEY,
Notary Public.

KINGWOOD, WEST VIRGINIA, *July 24th*, 1907.

Met pursuant to the foregoing adjournment.
Present: The same counsel who appeared on the previous day.
The taking of these depositions is resumed.

JULIUS K. MONROE, a witness produced on behalf of the State of West Virginia, having been first duly sworn, deposes and says as follows:

Deposition of Julius K. Monroe.

Examination by Mr. PRICE:

Q. 1. You are the surveyor who was selected by and have been representing the State of West Virginia in the surveys in this case, I believe?

A. Yes, sir.

Q. 2. You are the same Julius K. Monroe, whose deposition was taken in this case in July, 1906?

A. Yes, sir.

Q. 3. Since that deposition was taken have you done any work upon the ground along the disputed lines in this case?

3240 A. Yes, sir; I ran some reference lines and had a number of points identified along the lines by the citizens.

Q. 4. When was that work done?

A. That was done in 1907.

Q. 5. When did you begin and what work did you first do?

A. We first went to the Southern end of the line in the neighborhood of Daniel Gnegy's, and from thence Northward to the Pennsylvania line.

Q. 6. What if anything did you do at Gnegy's place?

A. We ran some reference lines from points located prior to this time to a corner of a small tract of land owned by Mr. Gnegy in West Virginia, which corner was pointed out on the ground by Mr. Gnegy.

Q. 7. Will you look at your map No. 1, filed in this case and state how the point is designated on the map which Mr. Gnegy pointed out to you?

A. The point or corner pointed out by Mr. Gnegy on the ground is indicated on map No. 1, by red "B 5." This corner was originally

a red oak and hickory. The red oak is now cut down but it stood at the Southeast corner of a parcel of land in West Virginia, adjoining lands in Maryland owned by Mr. Gnegy.

Q. 8. What did he point that out to you as representing?

A. As representing a corner of this small tract of land in West Virginia, for which he pays taxes in West Virginia.

Q. 9. How is that tract of land designated on your map No. 1?

A. This tract is a part of the tract designated as "E Bachtle 36¾ acres."

Q. 10. Did I understand you to say that Mr. Gnegy claims land on both sides at that point?

A. He does.

3241 Q. 11. Land lying West of the corner which he showed you he claim- to be in West Virginia?

A. Yes, sir.

Q. 12. And that lying East, in Maryland?

A. Yes, sir.

Q. 13. Now, that point "B 5,"—how does it correspond with the Michler line?

A. That point is very nearly in the Michler line.

Q. 14. What reference lines did you run and from what point?

A. I ran a reference line from the point "B 5" Northward to a planted stone which is another property corner of Daniel Gnegy's tract that I had previously tied up by a reference line from a stone standing at the edge of the Horse Shoe Road, which point is indicated on the map No. 1, by red "B 2," and I found that the point "B 5" is substantially in a South line from the points at "B 2" and "B 4" previously located.

Q. 15. What does the point "B 4" represent?

A. "B 4" represents a corner of the Pettyjohn 330-acre tract.

Q. 16. On yesterday Mr. Amelias Fike, or A. M. Fike, and Silas Fike, testified that they pointed out to you upon the ground last April a large white oak as their common corner on the old Maryland line. Have you indicated that white oak on your map No. 1?

A. I have. This point is indicated on Map No. 1, by red "B 6" and "W. O.," in black letters.

Q. 17. How did you locate that oak and why did you place it on the map at the point you do? I will first ask you whether you had previously located that oak before it was pointed out by them?

A. No, sir; I had not; except as would be indicated by the common corners of the John Pettyjohn and the John T. Goff

3242 lands, the title papers of which call for an oak standing on the old Maryland line—or on the Maryland-Virginia line, I should say—as a common corner between those tracts.

Q. 18. While on the ground how did you find the lines running from that oak as corresponding with the lines of these tracts?

A. I found the lines corresponding substantially as they are on the maps. The fences run both North and South from this point and also a division fence between Silas Fike and Amelias Fike runs Northwest from this point.

Q. 19. Was that oak marked in any way?

A. It was very anciently marked as a line or corner tree.

Q. 20. Do you remember on what side it was marked?

A. I do not recall positively about that. My recollection is that it was marked on the North and South sides.

Q. 21. What is the size of the tree?

A. It is a very large oak tree; I suppose it is three feet in diameter.

Q. 22. Mr. H. H. Beckman, in his testimony on yesterday, testified that in April last he pointed out to you upon the ground a white oak tree as a common corner between his land and the land of J. C. Dawson. Is it correct that he did point out such a tree to you?

A. He did.

Q. 23. Have you designated the location of that tree on your map?

A. I have. That point is designated on map No. 1, by red "B 7" and the black letters "W. O."

Q. 24. How do you locate that point on your map?

A. That is located by the calls of the J. C. Dawson and the Beckman tracts of land, which are described as common lines—the Eastern boundaries of each of these tracts as common lines run-
3243 ning North and South with the old Maryland line from the known point at the North end of the Dawson tract.

Q. 25. Were there any fences along between these points "B 6," "B 7" and "C2"?

A. Yes, sir; the fences as I recollect them, are a continuance between those points except a short distance Northward from "B6" where Silas Fike has purchased a small parcel of land in Maryland joining his West Virginia land and has removed the fence. The old fence, however, is plainly observable.

Q. 26. In your former running—in surveying that locality in this case—do you remember whether the fences were there?

A. I do not remember as to this particular point just North of "B6"; otherwise I think the fences are now as they were then.

Q. 27. Was this white oak which you have designated on your map as "D 7" pointed out to you by any one except by H. H. Beckman?

A. Yes, sir; Lloyd Dawson pointed out this tree as his Southeast corner and as standing in the old Maryland line as he claimed and recognized.

Q. 28. Had Lloyd Dawson previously pointed out to you the Northeast corner of his tract of land?

A. He had.

Q. 29. Where is that and how designated?

A. It is designated on this map by red "C 2."

Q. 30. And was located by actual survey on the ground?

A. Yes, sir; it was located by actual survey on the ground, in 1894.

Q. 31. These three points represented on your map as "D 6," "D 7" and "C 2"—does that representation on the map correctly show their location on the ground with reference to each other
3244 and with reference to the surrounding lines and tracts?

A. I believe it does.

Q. 32. Did Mr. Wesley Deberry point out to you any points or objects on the ground in April, 1907?

A. He did.

Q. 33. Will you state what those points were and whether you have located them on your map, and if so, how are they distinguished?

A. He first pointed out on the ground the Southeast corner of a tract known as the John Bacorn 500-acre survey, which is common with the Northeast corner of the H. White tract and is indicated on the map by red "D 2." This point is now marked on the ground by a stake which represents the point where a cherry tree formerly stood and stands in what is claimed and recognized in that section as the old Maryland line. He also pointed out a stone pile standing at the Southeast corner of a tract known as the Fredlock 210¼ acres, which is the Southeast part of the Deakins' 908-acre original survey. This point Mr. Deberry states stands in what is known as the old State line and represents also the Southeast corner of the 908-acre survey.

Exception by counsel for the State of Maryland to the statement made by Deberry, spoken of by the witness.

Q. 34. How is that point designated on your map?

A. That point is designated on the map by red "D ½."

Q. 35. Have you correctly located these points according to the actual surveying which you did upon the ground?

A. I have.

Q. 36. That is, you have correctly located them on your map with reference to the surveying?

A. Yes, sir.

3245 Q. 37. Did you notice whether there is any fencing or other object indicating a division line along there in that locality?

A. There is a fence along the line of the point "D 2." I believe there are no fences at the point "D ½."

Q. 38. Did you, in April last, see Mr. William T. Grove, at any point along the line?

A. Yes, sir; I called on Mr. Grove at his house, which is located on a tract of land marked on the map "John Rodeheaver 297."

Q. 39. Did Mr. W. T. Grove point out to you any object on the ground there, and if so, what? and as indicating what?

A. He did. Mr. Grove pointed out to me a stump standing in the edge of the old Burchinal road on the small stream called White Oak Spring Run, and stated that that was a corner of his land. This point is indicated on the map by red "D 20" and is the same point from which I ran a reference line in 1894 to the monument on Snaggy Mountain.

Q. 40. What was the object on the ground at that point, if any?

A. This point is a stump—a white oak stump—I have it here in my note book.

Q. 41. You have indicated that point as a corner of the Rodeheaver survey, have you not?

A. Yes, sir.

Q. 42. And you stated that Mr. Grove pointed it out as a corner of his land. Does he own that point of the Rodeheaver survey?

A. Yes, sir.

Q. 43. Have you anything in your possession that indicates that that is a correct location of that corner of the Rodeheaver survey?

A. I have an old map made by the county surveyor of the Rodeheaver tract on which this point is minutely described as
3246 standing on the North edge of the Burchinal and on the bank of White Oak Spring Run, which corresponds with the location of this stump. Mr. Grove's title papers also conform to this location and the bearings of his lines are common with the original Rodeheaver survey, with the usual corrections for variations.

Answer excepted to by counsel for the State of Maryland.

Q. 44. Where did you get this map?

A. I am not sure just where I secured this paper. My recollection is that I got it from J. M. Crane.

Q. 45. What connection did he have if any with the lands touching at that point?

A. He had no connection directly but had a number of the old title papers in his possession which formerly belonged to his grandfather, Jacob Crane, who owned a large amount of land in this section of the country.

Q. 46. Will you file that map with your deposition?

A. I will; marked "Monroe Exhibit 70."

Q. 47. Now, this point "D 20" is located, as I understand you, by a reference line running to the line which you ran from the Fairfax stone through to the Pennsylvania line in 1894?

A. Yes, sir.

Q. 48. Did you see Mr. Eli G. Albright upon the ground during your trip in April last?

A. I did.

Q. 49. Did he point out to you any object upon the ground, and if so, what?

A. Yes, sir; he pointed out on the ground a point as a common corner between his and Marcellus Albright's tract, which is indicated on the map at red "F 14."

3247 Q. 50. How do you locate it on the map at that point in that way?

A. It is located on the map be protraction from the point "F 2" which is a corner of the original Marcellus Albright and the J. C. Feather tracts. The point "F 2" was located by actual survey from known points in the reference line run in 1894.

Q. 51. In what way did you locate that by protraction? What did you have?

A. I have a description of the metes and bounds of the Albright tract and of the John Crane survey and of the Eli Albright tracts, and various other tracts in that section.

Q. 52. And you protracted them from the point "F 2" which you had previously located by actual survey?

A. Yes, sir.

Q. 53. That point "F 2" is a corner of what tracts?

A. A corner of the J. C. Feather tract and the original of the Marcellus Albright tract; but a small portion of the Marcellus Al-

bright tract on that side has been sold to a man by the name of Frazee. That chestnut is a common corner between the Feather lands—that is, the Joseph Feather lands and the J. C. Feather lands,—and the Albright land.

Q. 54. You have located on your map the tract designated by the words, "John Crane, 491 acres." What relation if any does that bear to the Albright tract and corners that were pointed out to you?

A. The John Crane 491-acre survey is now held by the Jefferses, Perry Matheney and Eli Albright. Eli Albright owned a small portion of the Northeast part of the tract—about 30¼ acres—and the point "F 14" represents the Northeast corner of this parcel.

3248 Q. 55. That John Crane 491 acres, then,—is it correctly laid down as run to that point "F 14"?

A. It is so far as I am able to discover. The actual corner is not there; of course it was long since destroyed.

Q. 56. Now, the William Gable survey of 500 acres seems to cover some of the Albright lands. What reason had you for locating that Gable tract as you have on your map?

Counsel for the State of Maryland objects to the examination of the witness as to these matters, because they are all gone into at the time of the taking of the testimony in July, 1906.

A. In the description of the John Crane patent of 491 acres, the Northern line calls to corner with the Gable survey at a point marked on the map red "F 3" and is a common line with the Gable survey to the Northeast corner of the Crane tract which is indicated at "F 14."

Q. 57. And that is the point pointed out to you by Albright on the ground?

A. Yes, sir.

Q. 58. Mr. Joseph Guthrie, on yesterday, testified that he had pointed out to you a chestnut tree or snag as a common corner between his land and the D. G. Evans 220-acre tract. Do you remember of his pointing this out to you?

A. I do.

Q. 59. Have you indicated that point on your map in any way?

A. I have. This point is indicated on the map by red "H 1."

Q. 60. In what way do you fix it at that point on the map?

A. That point is located by actual survey from a point in the reference line ran in 1894.

3249 Q. 61. Is there a chestnut snag or tree standing there?

A. There is.

Q. 62. This D. G. Evans tract is what original survey?

A. It is the original Isaac James' survey.

Q. 63. Who owns it now?

A. I believe it is owned by a man named Thomas, at present.

Q. 64. Is that Mr. A. J. Thomas, the man who was examined on yesterday?

A. He is a brother of A. J. Thomas, as I understand it.

Q. 65. Well, Mr. A. J. Thomas, who was examined on yesterday, testified to pointing out to you a corner of some land that he bought

from Fearer. Is it correct that he did point out such a corner to you?

A. He did.

Q. 66. What land did he buy from Fearer?

A. He bought a portion of the tract indicated on the map as "Fearer 50¼ acres."

Q. 67. Now, where is the corner that he pointed out to you and how designated on the map?

A. The corner is a Southeast corner of the Fearer 50¼ acres, as indicated on the map, and is marked red "H 2." Mr. Thomas also stated that this point was a common corner between him and his mother and the Evans tract.

Q. 68. How did you locate that point on your map?

A. That point is located by actual survey from the chestnut snag above referred to.

Q. 69. The chestnut snag pointed out by Guthrie?

A. Yes, sir.

3250 Q. 70. And that had been located by actual survey in 1894?

A. Yes, sir.

Q. 71. Did you notice any fencing corresponding with that point "H 2" running North and South?

A. Yes, sir; there is a fence in the line with that point running both North and South.

Q. 72. Did you notice how far that fence ran North on that line?

A. I cannot say exactly. I believe, however, it is continuous from that point North for probably two miles or more. At points where I noticed it at all there were fences on that line.

Q. 73. In April, 1907, when you were on the ground did you see Mr. Jermanous Thomas?

A. I did.

Q. 74. At what point?

A. At his house and on the ground at or near the Pennsylvania line.

Q. 75. Is his house indicated on your map?

A. The house in which he lives is; yes, sir.

Q. 76. How?

A. By a small square dot marked "Thomas."

Q. 77. Now, did Mr. Jermanous Thomas point out to you any objects on the ground there, and if so what, and how are they described on your map No. 1?

A. He did. He pointed out a large stone heap as the Northeast corner of his or his father's land in West Virginia, and the Northwest corner of lands owned by them in Maryland. This point is indicated on the map by the letters "W. Z." enclosed within a circle at the intersection of the Eastern line of the tract marked "Jacob Thomas 100" with the Pennsylvania line.

3251 Q. 78. How did you locate it on the map at that point?

A. It is located by actual measurement from the monument standing East of it 61 poles.

Q. 79. When did you do that?

A. In April, 1907, and also in the first survey in 1894.

Q. 80. I noticed on your map No. 1, these letters "W. Z." are enclosed in a red circle somewhat to the right of the intersection of the Eastern line of the Thomas 100 acres with the Pennsylvania line. Is this stone pile within this red circle or is it at the actual point where the Eastern line of the Jacob Thomas 100 acres intersects with the Pennsylvania line?

A. It is at the point where the East line of the Thomas tract intersects with the Pennsylvania line and not within the circle.

By agreement of counsel the witnesss Julius K. Monroe was here excused from the witness stand in order that Mr. Jermanous Thomas might be examined.

JERMANOUS THOMAS, a witness produced on behalf of the State of West Virginia, having been first duly affirmed, deposes and says as follows:

Deposition of Jermanous Thomas.

Examination by Mr. PRICE:

Q. 1. State your name?
A. Jermanous Thomas.
Q. 2. Your age?
A. Forty-five years.
Q. 3. Your place of residence?
A. Preston county, West Virginia.
Q. 4. Your occupation?
3252 A. Farming.
Q. 5. What part of Preston county do you live in?
A. In the East end of the county from here—or Northeast.
Q. 6. How far from the Pennsylvania line?
A. About seventy-five yards.
Q. 7. And how far from the Maryland line?
A. About forty rods, I reckon.
Q. 8. Now, is that Maryland line East or West of your house?
A. Why, it is East.
Q. 9. Do you know where the Michler line is?
WITNESS: Which line is it?
Mr. PRICE: The line known as the Michler or the new Maryland line that was run just before the war?
A. Why, at the mud pike where the corner stone was put up there; I think that was run before the war.
Q. 10. Is that East or West of you?
A. That is West.
Q. 11. How far West?
A. About one hundred rods.
Q. 12. Is there a monument there on the Pennsylvania line?
A. Yes, sir.
Q. 13. Now, which of the two lines have you, and those under whom you claim, recognized as the state line—the line East of you or the line West of you?

A. The line East is the one where we have been paying taxes to.
Q. 14. How far did you saw that line was East of your house?
A. About forty rods, as near as I can tell.
Q. 15. How long have you lived at that point?
A. I was going to say I always lived there, but then we
3253 built a new house. Why, about twenty years, I guess.
Q. 16. In the present house?
A. Yes, sir.
Q. 17. And before that house was built where did you live?
A. I lived at the spring at an old log house my father built.
Q. 18. When did your father build that house?
A. I do not just exactly know how long it was back but I suppose about thirty-five or forty years.
Q. 19. What was your father's name?
A. Abraham Thomas.
Q. 20. And what was his father's name?
A. Jacob or Jakey Thomas.
Q. 21. Now, the tract of land that you live on, is it an original patent?
A. Yes, sir.
Q. 22. Who took the patent out originally?
A. I suppose it was my grandfather, Jacob Thomas.
Q. 23. Was that patent in Virginia or Maryland?
A. Why, it was in Virginia.
Q. 24. During the time that it has been occupied by your father and yourself in which state has it been assessed for taxes—Maryland or West Virginia?
A. Why, of course there is a piece there that was assessed in Maryland—about 45 acres—and there is about 120 acres assessed in Virginia. That runs to what we call the Maryland line and joins there.
Q. 25. This Jacob Thomas tract of 100 acres, is it assessed in Virginia or Maryland?
A. In Virginia.
3254 Q. 26. You claim to be a citizen of what state?
A. West Virginia.
Q. 27. And your father before you?
A. Yes, sir.
Q. 28. Where did your grandfather live?
A. He lived there, too, at the same place.
Q. 29. He lived at the same place?
A. Yes, sir.
Q. 30. So there was a house there before your father built?
A. Yes, sir; he had built a house there before.
Q. 31. And what is the tradition in your family as to whether he claimed to own it in Virginia or Maryland?
A. My grandfather claimed in Virginia. Everything that he had a deed for was all in Virginia when he had it.
Q. 32. Now, do you own any land on the Maryland side of what you call the boundary line?
A. Why, there is 45 acres there that I claim in Maryland.
Q. 33. Do you recognize it as being in Maryland?

A. Why, yes, sir; I guess I will have to, because I have been paying taxes on that 45 acres.

Q. 34. In Maryland?

A. Yes, sir.

Q. 35. Have you always paid taxes on it in Maryland?

A. I could not say about always; I guess my grandfather paid for it in Virginia.

Q. 36. Is that a separate piece of land up there?

A. Yes, sir; it is separate now, but it was not in his deed. It was in Virginia but the way he had it run put it in Maryland.

Q. 37. Is there a Maryland title for it?

3255 A. Yes, sir.

Q. 38. What is its name? Has the tract any Maryland name?

A. I do not know about that; it is in Garrett county but I do not know about the name.

Q. 39. Do you know anything of a tract of land in Maryland called Hammond's corner?

A. Yes, sir; Hammond's tract; that is the name of it.

Q. 40. Is it?

A. Yes, sir.

Q. 41. It is known as Hammond's tract?

A. Yes, sir; that is right.

Q. 42. Now, what is the Northwestern corner of that Hammond tract?

A. It is right there where we claim the corner.

Q. 43. What object is there on the ground?

A. There is a stone pile there; that has always been there for the corner; that is what my father claimed.

Q. 44. Do you know Mr. Julius K. Monroe, the surveyor in this case?

A. Yes, sir.

Q. 45. Was he at your place last April?

A. Yes, sir.

Q. 46. Did you point out to him this corner on the ground?

A. Yes, sir.

Q. 47. Now, this stone pile, then, you claim to be what?

A. The corner of the Maryland line.

Q. 48. Is that the corner where the Maryland line intersects the Pennsylvania line?

A. Yes, sir.

Q. 49. And from that a dividing line runs South between this 45 acres and this other land?

3256 A. Yes, sir.

Q. 50. And the land that was first known as the Hammond tract in Maryland?

A. Yes, sir.

Q. 51. And on the West is the Thomas land that your grandfather, your father and yourself have always occupied?

A. Yes, sir.

Q. 52. Who owns the land just South of you along the Maryland line?

A. Why, a man by the name of Joe Thomas.
Q. 53. Is he any kin to you?
A. He is a cousin.
Q. 54. Where did he get his title from?
A. Why, he bought from Taylor Umble.
Q. 55. And where did Umble get it?
A. He bought—let's see; I forget the man's name; it was either A. Fike or Frank Bowser that he bought it of.
Q. 56. Now, running Southward from this stone pile is there a continuous line running South from that, known there as the Maryland line?
A. Yes, sir.
Q. 57. How far South do you know it as the Maryland line?
A. Why, I know it as far as the chestnut tree where they work the road over there. That is where they all claim to over there.
Q. 58. Where is that chestnut tree?
A. It is just about three quarters of a mile from this stone pile where we claim the corner is. It is right up the road there and the Virginins work the road to that chestnut tree.

Exception by counsel for the State of Maryland because
3257 there is no chestnut located upon the map at the point mentioned by the witness.

Q. 59. Now, is that chestnut tree three fourths of a mile South of this stone pile on the Pennsylvania line?
A. Yes, sir.
Q. 60. Whose land does this line run through?
A. Why, a man by the name of McDermott, of Pittsburg, and Frank Fike. Well, Frank Fike owns on one side and McDermott on the other side that the road runs through.
Q. 61. Does McDermott own land in Maryland or West Virginia?
A. In Maryland.
Q. 62. And who owns on the West Virginia side opposite him?
A. Why, Isaiah or Isaac Umble; I think they call him Isaiah. He just bought that about a year ago.
Q. 63. Who did he buy it from?
A. From Mrs. Fike—Isaac Fike's widow.

And upon cross-examination by Mr. SINCELL, the witness testified as follows:

Cross-examination:

Q. 1. From whom did you get title to that 45-acre tract in Maryland?
A. Why, it had been sold for taxes at different times. My brother owns it. He hired a lawyer and he has had trouble with it all the time. It seems like they would drop it and have to buy it again.
Q. 2. What is your brother's name?
A. Marshall M. Thomas. He bought it of Jack Guard.
Q. 3. Guard was tax collector in Maryland, wasn't he, once?
A. Yes, sir.

Q. 4. Did your brother buy it at tax sale?

3258 A. Yes, sir.

Q. 5. And he has constantly had trouble about it?

A. Yes, sir.

Q. 6. Is that land cleared out and under fence?

A. Yes, sir; the bigger part of it is.

Q. 7. Does your brother live on it?

A. No, sir; nobody lives on it; there is no building on it at all.

Q. 8. Do you remember when Mr. Monroe ran the line through there in 1894?

A. Yes, sir.

Q. 9. Did he end his line at the stone pile that you have been talking about?

WITNESS: That is, that time?

Mr. SINCELL: Yes, sir.

A. No, I think he ran down below the first time, between the mud pike and the house.

Q. 10. What do you mean by "down below"—down East?

A. Down below our house. I mean between our house and the mud pike.

Q. 11. Do you mean East of West of your house?

A. West of the house.

Q. 12. How far West was it?

A. Why, about thirty rods, I reckon.

Q. 13. How many lines do you know through there as the boundary lines between the states of Maryland and West Virginia.

WITNESS: How many lines do I know?

Mr. SINCELL: Yes, sir.

A. I know of several that have been run.

Q. 14. Just name them will you?

3259 WITNESS: That is, all of them beginning at the stone pile?

Mr. SINCELL: Yes, sir; all that you know.

A. Well, they call it the corner where Maryland claims the line. The stone pile is the corner.

Q. 15. You mean the stone-heap corner that you pointed out to Mr. Monroe last April?

A. Yes, sir; that is one; and as I said, down below the house is two, and at the mud pike is three. Now, the one at Ross Cuppett's and Robinson's is four, and that is all I know of.

Q. 16. Then, it is uncertain as to where the line is, is it not?

A. I think it is very uncertain; it seems that way, the way they have been running it.

Q. 17. Now, down below the house as you call it—that is the line that Mr. Monroe ran in 1894?

A. Yes, sir.

Q. 18. That is West of your house?

A. Yes, sir.

Q. 19. And then at the mud pike where the monument is, that is the Michler line, isn't it?

A. I guess so; I guess that is what they call it.

Q. 20. And then the line at Ross Cuppett's and Robinson's is the line that Maryland ran in 1897?

A. Yes, sir.

And upon redirect examination by Mr. PRICE, the witness testified as follows:

Redirect examination:

Q. 1. How far West of the Michler monument is this line at Cuppett's and Robinson's.

3260 A. Why, I suppose it must be nearly a mile or maybe further.

Q. 2. Did you ever hear of anybody claiming the state line over there until they ran that in 1897?

A. No, sir; I never did; that was the first; I do not know as anybody has claimed it there since but there is where they ran.

Q. 3. Did they put up a monument?

A. No, I do not think they did; if they did I never saw it.

Q. 4. Do you know when that Michler line was run that the monument is on?

A. No, I do not; that was before my time. I guess that is a kind of old line. I mind something near the time but I do not remember just when the stone was put there. I cannot mind about that; the stone was there ever since I knew anything.

Q. 5. You do not know from hearing your father say whether it was put there just before the war or not?

A. No, I do not and could not say about that. I think it was along about that time, though. I know I have seen the stone and stakes and when I saw them they were sound; they were just wooden stakes put up in Joseph Miner's lane and by their cherry trees.

Q. 6. That was when you were a boy?

A. Yes, sir; when I was quite a boy.

Q. 7. Well, now, the only other running that you know of is that that Mr. Monroe did in 1894, isn't it?

A. Yes, sir; and then I know one Maryland line that ran by Cuppett's.

Q. 8. I mean leaving that far line out, then the Michler line; then the other line Mr. Monroe ran in 1894, or about that time, didn't he?

A. Yes, sir; I mind about that.

Q. 9. Then the other line is the line that you say runs

3261 from this stone pile East of your house?

A. Yes, sir.

Q. 10. Now, what is that line known as?

A. It is known to me—I have always claimed that is the line and always worked the road to that line and paid taxes to that line.

Q. 11. Well, your neighbors living South and West—what line has been recognized among them as the State line?

A. Why, that is the only line; that line where the stone pile is is recognized as the line; everybody has claimed it there and paid taxes to that line on both sides—Maryland and Virginia—ever since I have known anything, and long before I reckon.

Q. 12. Is that the same line continued on down through the Van Sickel and Fike country?

A. Yes, sir; it continues, as far as I know, clear through there.

Q. 13. Now, you say your brother has had trouble with his Maryland title on that 45 acres?

A. Yes, sir; he has had trouble all the time.

Q. 14. Does anybody else claim it?

A. It seems like they would drop it and they would sell it for taxes and he could not get it right in some way.

Q. 15. Nobody else claimed it?

A. Nobody else claimed it. Now, he says he is going to hire a lawyer to straighten it up and get it in shape; he has always had trouble with it.

Q. 16. How long has he owned it?

A. Why, about twelve or fifteen years, I guess.

Q. 17. Who claimed it before that?

A. My father and my grandfather; they alway[illegible]ad it; they would not give it up but always had trouble with it.

3262 Q. 18. Did they claim it under a Virginia or Maryland title?

A. My grandfather claimed it under a Virginia title but he always had trouble with that mound but he always kept it.

Q. 19. Do you know where the "Soldiers' Lots" are, along in Maryland there,—the military lots?

A. No, I do not believe I do.

And upon re-cross-examination by Mr. SINCELL, the witness testified as follows:

Recross-examination:

Q. 1. At the time your grandfather claimed it under a Virginia title, where did he claim the Virginia and Maryland line to run—East of it?

A. He claimed it ran East of it.

Q. 2. And it was uncertain in his time as to where the line was?

A. Yes, sir; his title was made to run across further; it ran clear across this lot we were talking about where they claimed in Maryland. He claimed under what they call the monument—that stone there; he claimed that was the corner of his land and that monument called for a call that is about sixty rods on this side.

Q. 3. Then, there is a monument or stone East of the stone pile that you claim as the end of the line?

A. Yes, sir; that is why it was put there—for the corner, sixty rods further away.

Q. 4. You do not know who put that there?

A. I do not know the man's name; I know the time and when they put it up; it was in 1885, I think, when it was put up.

Q. 5. Well, that is the monument marking the Southern boundary of the State of Pennsylvania, is it not?

3263 A. I think so, yes, sir; it always was a mound there.

Q. 6. Now, there is a stone monument put there in 1885?

A. Yes, sir.

Q. 7. And on the North side of that stone it is marked "Pa," is it not, and on the South side it is marked "Md," is it not?

A. Yes, sir.

Q. 8. And a mile East—do you know whether a mile East of that stone there is another one like it?

A. No, it ain't one like it; it ain't as big a stone; it is a stone but it ain't as big a one.

Q. 9. It is a cut stone planted by these same people who put this stone up?

A. I do not know whether they were the same or not; I guess they were, though.

Q. 10. Is there a stone a mile West of that monument in the same line?

A. Yes, sir; on the Pennsylvania and Virginia line.

Q. 11. That is a mile West?

A. A mile West or nearly so; I do not know whether it is quite a mile or not but it is pretty close to it.

And upon redirect examination by Mr. PRICE, the witness testified as follows:

Redirect examination:

Q. 1. Do you remember any of the names of the men who put that there in 1885?

A. No, I never heard their names.

Q. 2. Was Captain Chipley one of them?

A. I think so, yes, sir; they were men from away off some where and I was not acquainted with them.

3264 Q. 3. Do you know what states they professed to represent?

A. They claimed that was a corner—those men did.

Q. 4. Were they representing West Virginia and Pennsylvania at the time?

A. Yes, sir; they said they had a common account of it in Washington City—of that being the corner.

Q. 5. Well, were they West Virginia men?

A. No, I think they were Pennsylvania men—may be Pennsylvania and Virginia both.

Q. 6. Wasn't it both?

A. I think they were both; yes, sir.

Q. 7. Well, didn't they stop there? Did they locate any monument East of that—those same men?

A. Why, I could not say; there were stones put all along the line, I guess, but not stones like that; they are common stones.

Q. 8. Now, you think your grandfather claimed over to that point?

A. Yes, sir; he claimed to that point.

Q. 9. And you say there is a mound there?

A. There is a mound there; yes, sir.

Q. 10. What kind of a mound?

A. Just a pile of dirt and stone thrown up right where they put that stone and they claimed that was the place.

Q. 11. Is your father still living?

A. No, sir; he is dead.

Q. 12. When did he die?

A. I do not know just exactly but it was about seven years ago.
Q. 13. Your grandfather is also dead?
A. Yes, sir.

The witness JULIUS K. MONROE was then recalled for cross-
3265 examination by Mr. SINCELL, and testified as follows:

Cross-examination.

Q. 1. You have spoken in your examination in chief of the large stone heap which is shown upon your map by the black circle or dot and letters in red "W. Z.," and as standing at the Northeast corner of the Thomas lands in West Virginia and the Northwest corner of the lands owned by them in Maryland. Is that point at the North end of the line that you ran in 1894, in this case?
A. No, sir.
Q. 2. That is East of the Northern line that you ran at that time?
A. Yes, sir.
Q. 3. About how far East is it?
A. It is about ninety rods East of the line I ran in 1894.
Q. 4. Tracing that line back from the black circle and letters "W. Z.," does that line run continuously as a straight line to the Fairfax stone?
A. It does. (not?†)
Q. 5. About how far South from the Mason and Dixon line does that line run?
A. That line is continuous South for about five miles.
Q. 6. From the end of the five miles South of the Mason and Dixon line, that line is no longer recognized as the boundary between the states by people living in West Virginia, is it?
A. It is not.
Q. 7. In point of fact there is no line from the end of five miles South of the Mason and Dixon line, is there?
A. There is a boundary line but it is somewhat farther West from that point.

Q. 8. About how far West is the boundary line from the
3266 end of five miles South of Mason's and Dixon's line?

A. It is approximately twenty rods.

Q. 9. At the time Mr. Eli G. Albright pointed out to you the corner of his land as designated upon your map at red "F14", he pointed it out simply as a corner of his land, did he not?
A. Yes, sir; a corner of his and of the Marcellus Albright tract.
Q. 10. And he pointed it out without reference to the Crane 491-acre tract and the Gable tract, did he not?
A. Well, this point was a corner of a 30-acre tract which was known as the Crane land. He was unable to state as to whether it was in the Gable line or not. He said he had part of the Gable land but was unable to show just what part of it he owned. Certain portions of his farm were designated as part of the Gable land.
Q. 11. There was no reference in his title papers to the Gable and Crane 491-acre tracts?

[† In pencil in copy.]

A. No, not directly; he acquired the 30-acre tract, I think, from his father or from William Engle, I am not sure which, who acquired it from a man by the name of Doll.

Q. 12. The John Crane 491-acre tract is located upon your map by protraction simply, is it not?

A. Yes, sir.

Q. 13. And the Gable is also located in the same manner?

A. In the same way.

Q. 14. When you state that the John Crane 491-acre tract is correctly located upon your map, you mean that it is correctly located by protraction, do you not?

A. Yes, sir.

Q. 15. And not as a result of actual survey?

A. No, sir; it would have been impossible to have made those surveys, of course, at the time.

3267 Q. 16. You have spoken of a cherry tree as having formerly stood at the point marked red "D 2" on your map, which point was shown you by Wesley Deberry. Did you ever see that cherry tree?

A. I never did.

Q. 17. What is your information as to the cherry having stood there?

A. A cherry was called for in the original papers.

Q. 18. In what papers was it called for?

A. The Bacorn and the White papers.

Q. 19. That is, in the Bacorn patent and the Francis and William Deakins 908?

A. In the Henry White tract.

Q. 20. The Henry White tract was not an original survey was it?

A. Yes, sir.

Q. 21. An original patent?

A. Yes, sir; Mr. Deberry was mistaken about that the other day about that being a part of the Deakins tract, as it was not.

Q. 22. That point was located by protraction, was it not, or did you locate it by actual survey?

A. Well, practically by actual survey. We took a reference on a line when we ran through there, about five rods to the left of this point.

Q. 23. But as a matter of fact you did not locate this point by actual survey?

A. No, not by actual survey.

Q. 24. You assumed that the reference line which you ran—that the end of the reference line which you ran came within five rods or about five rods of this point?

A. Yes, sir; we crossed the Southern line, in other words,

3268 of the Bacorn tract, about five or six rods to the left of this point. That was pointed out to me by Mr. White when we crossed the line.

Q. 25. Now, are the points red "D 2" and red "D ½" on your

map in the same line upon the ground as the stone pile pointed out by Jermanous Thomas, at the intersection of the Pennsylvania line?

A. No, sir; they are somewhat West of that line.

Q. 26. Do you know about how far West?

A. No, I could not say exactly.

Q. 27. In point of fact these lines have been located according to the claims, pretensions, holdings and possessions of the citizens living along the line, have they not?

A. Yes, sir; they have.

Q. 28. And in fact there is no continuous straight line recognized as a boundary between the two states from the Fairfax stone to the Mason and Dixon line?

A. There is not.

Q. 29. And the locations made by you in this case, on behalf of the State of West Virginia, show this to be the fact, do they not?

A. They do.

Q. 30. Did you locate by actual survey the lines of the A. M. and Silas Fike tracts?

A. I did not.

Q. 31. They are located upon your plat by protraction?

A. They are; from known points North and South.

Q. 32. The oak shown at red "B 6" and the black letters "W. O." on your plat was not located by actual survey on the ground, was it?

A. It was not.

Q. 33. That was put there by protraction to conform to the
3269 call in the Amelias Fike and Silas Fike surveys, was it not?

A. It is located on the map at the common corner between Amelias Fike and Silas Fike in a line produced Southward from the known corner of J. C. Dawson and Northward from the known corner of the Pettyjohn tract at "B 4." The tracts of land between these points are described as having a continuous Eastern boundary line.

Q. 34. But in fact this tree was located by protraction?

A. Yes, sir.

Q. 35. This tree was marked simply as a corner, was it not?

A. I am not sure about that; the marks were very dim.

Q. 36. There was nothing on the tree to indicate that it stood in any state line, was there?

A. No, sir.

Q. 37. Was the white oak shown at red "B 7" on your plat located by actual survey?

A. It was not.

Q. 38. If the white oak at red "B 6" and the white oak at red "B 7" were not located by actual survey upon the ground, how do you know that they are in the same due North and South line?

A. The fences are continuous between these points, and beyond, and appear to be straight and practically parallel to the reference line I ran. They are possibly subject to the ordinary errors in land surveying.

Q. 39. But without an actual survey of the line between these two

trees, is it possible for you to say with certainty that they are in the same due North and South line?

A. I could not say that they are in the exact due North and South line.

And upon redirect examination by Mr. PRICE, the witness
3270 testified as follows:

Redirect examination:

Q. 1. When you say that there is not a continuous line from the Fairfax stone to the Pennsylvania line recognized as a boundary between the two states, you mean that there is not a straight line. You do not mean a continuous line, do you?

A. It is a continuous but not a straight line.

Q. 2. Well, you said to Mr. Sincell in answer to his question that there was not a continuous line between the Fairfax stone and the Pennsylvania line recognized as the State boundary line. Did you mean that literally?

A. No, sir; I understood from his question that he asked if there was a continuous straight line. The line is practically continuous, or is continuous, except that it is not a straight line.

Q. 3. You have stated that the locations which you have made along that line were simply of the claims and pretensions and holdings of the citizens. Have you not located or attempted to locate upon the ground the actual patents and grants by the State of Virginia?

A. Well, those as I understand are the holdings of the citizens to the claims by their patents.

Q. 4. So that when you say that your locations are claims, pretensions and holdings of the citizens, you mean under the grants from the State of Virginia?

A. Yes, sir; from the State of Virginia.

Q. 5. Is there any doubt in your mind from having been upon the ground and from the surveys which you have made, that the points "B 6" "B 7" and "C 2" are substantially in the same due North and South line?

3271 A. No, sir; there is none.

Question excepted to by counsel for the State of Maryland.

Q. 6. Mr. Sincell has asked each witness, perhaps, practically, during this examination, and also yourself, as to the location of the line which was run by you in 1894, and has spoken of it as one of the lines claimed as a boundary line between the states. Do you know of anybody claiming that line, as you ran it, as a boundary line between the states?

A. I do not.

Q. 7. Did you run it as such a line?

A. No, sir.

Q. 8. You ran it how, then?

A. Simply as a reference line.

Q. 9. Has that been fully explained in your former testimony in this case?

A. It has.

And upon recross-examination by Mr. SINCELL, the witness testified as follows:

Recross-examination:

Q. 1. Upon redirect examination you have stated that there is a continuous line from the Fairfax stone to the Mason and Dixon line. Is it not a fact and does your plat not show that this line which you say is a continuous, is a broken line, having off-sets in it here and there?

A. What I mean by a "continuous line" is that the land holders West of this line are continuous or contiguous from the Fairfax stone to the Pennsylvania line. There are off-sets in the line at different points and where these off-sets occur our citizens
3272 claim to be their grounds over to the off-sets and with the line as indicated on the map.

Q. 2. Then you have ascertained by actual survey in this case that these grounds on the part of the State of Virginia have for their Eastern boundary no due North and South line running from the Fairfax stone to the Mason and Dixon line?

A. Not a continuous due North and South line.

Q. 3. And some of them extend further East than others?

A. Yes, sir.

The Supreme Court of the United States.

STATE OF MARYLAND
vs.
STATE OF WEST VIRGINIA.

The State of West Virginia offers in evidence in her behalf in the above entitled cause the following document and papers, and historical matter.

I. The first charter of the colony of Virginia, dated April 10th, 1606, as the same is published in the work, and entitled, Charters and Constitutions of the United States. Part Second, page 1888.

II. The second charter of Virginia, dated May 2nd, 1609, as the same is published in the said work, Charters and Constitutions of the United States,—Part 2nd, page 1893.

III. Smith's History of Virginia, volume I, book III, Chapter I, page 149.

IV. Smith's History of Virginia, volume I, book III,
3273 chapters V. and VI. and the map published therewith.

V. Smith's History of Virginia, appendix No. 2, page 8, etc.

VI. Report number 457, 28th Congress, first session, House of Representatives, entitled (Issue of script.) To accompany the bill of the House of Representatives, No. 353, made by Hon. H. E. Hub-

bard, from Committee on Public lands; also letter of Mr. Hubbard to Hon. H. A. Wise, dated September 6th 1872, and a copy of which is found on page 1 and 4 of the appendix to the report of the Virginia Commissioners on Maryland and Virginia boundary line of 1873.

VII. The report and accompanying documents of the Virginia Commissioners on the Maryland and Virginia boundary line of 1873, Exhibit A. filed with the answer of the defendant in this cause.

VIII. The third Charter granted by King James the First, to the London Company, March 12th 1612, as found in the publication of Charters and Constitutions, Part Second, page 1902.

IX. Henning's Statutes at Large, pages 230-236.

X. The Charter of Maryland granted to Cecilius Calvert, baron of Baltimore, 1632, as the same is published in Charters and Constitutions of the United States, Part 1, page 810.

XI. Copy of the said Charter of Maryland as found in House Documents of Maryland, 1874, Pages 219 and 220.

XII. Opinion of Chief Justice Marshall in the case of Johnson and Graham, lessees, *vs.* Wm. McIntosh, 8 Wheaton, page —.

XIII. De Jarnett papers No. 80, Colonial, Virginia, volume 59, No. 19 dated August 3, 1663, and found at page 155 of the report of the Virginia Commissioners on the boundary line on Maryland and Virginia of 1873, filed as exhibit A. with the answer in this cause, being letters patent to Lord Germine and others, dated August 3, 1663, for the Northern Neck of Virginia.

3274 XIV. Confirmatory letters patent, dated May 3, 1667, to Lord Hopton and others, for the Northern Neck of Virginia.

XV. 1st. Revised Code of Virginia, 1819, Chapter 89.

XVI. The settlement of the title of Lord Fairfax and his devisees to the Northern Neck of Virginia, as found in the case of Fairfax's devisees *vs.* Hunter's lessees 7 Cranch 604.

XVII. Also settlement of the same title in the case of Marshall *vs.* Conrad, 5 Call (Virginia) 404.

XVIII. 1st Revised Code of Virginia, 1819, Chapter 92.

XIX. 1st Revised Code of Virginia, Chapter 91.

XX. Chapter 47 of the Acts of the General Assembly of Virginia of 1785. Said chapter being erroneously numbered 67.

XXI. Byrd's Manuscripts Proceedings of the Commissioners to lay out the bounds of the Northern Neck.

XXII. Copy of map made of the Northern Neck, of Virginia by the Commissioners who surveyed the same, which is filed with the answer in this cause, marked "survey of Northern Neck 1736-7." Defendant's exhibit B.

XXIII. Narrative and Critical History of America, edited by Justin Windsor, librarian of Harvard University, volume 5, pages 272, 273, 276, etc., as far as the same relates to the ascertainment of the boundaries of Lord Fairfax grant of the Northern Neck.

XXIV. Survey and copy of the surveyors note-book kept by Thomas Lewis, one of the surveyors of the Commissioners who ran the line between the head springs of the Rappahannock and Potomac

rivers in 1746, and planted the Fairfax Stone at the head of the North Branch of the Potomac River. This copy is introduced in lieu of the original note-book by agreement of counsel, for both sides.

XXV. Chapter 55 of the Acts of the General Assembly of
3275 Virginia of 1748, found in 6 Henning's Statutes at Large, page 198 stating the settlement of the controversy between the colony and Lord Fairfax about the Northern Neck.

XXVI. Acts of the General Assembly of Virginia, passed October —, 1785, providing for the safe keeping of the land papers of the Northern Neck, in the Register of the Land Office of Richmond.

XXVII. Acts of the General Assembly of Virginia passed the — day of —— 1738, creating the counties of Augusta and Frederick.

XXVIII. Spark's Life of Washington, pages 12 and 13.

XXIX. Copy of map published with John Smith's History of Virginia in 1629, filed with the answer in this cause and marked defendant exhibit C.

XXX. Copy of map made by Augustine Herman in 1670 for Lord Baltimore, filed with the answer in this cause, marked defendant exhibit D.

XXXI. Copy of map of Frye and Jefferson, published in 1755, filed with the answer in this cause, marked defendant exhibit F. and G.

XXXII. Report of the late Chas. J. Faulkner to Gov. Floyd of Virginia, made in 1832, found in Kercheval's History of the Valley, page —, also in Lewis' History of West Virginia, Chapter 17.

XXXIII. Copies of the letters between Gov. Sharpe of Maryland and Lord Baltimore 1753 and 1757 as published in the "Archives" Maryland, in the volume entitled "Correspondence of Gov. Sharpe—1753—1757," namely: Letter from Sharpe to Cecilius Calvert, secretary of Lord Baltimore, dated August 2nd, 1753.

Letter from Sharpe to Calvert, dated September 14th, 1753, page 5.

Letter from Sharpe to Lord Fairfax, as stated in his letter to Calvert, September 14th 1753: later, Fairfax's reply to said letter, dated September 24th, 1753, page 7.

3276 Sharpe to Calvert, November 29th, 1753, page 14.

Lord Baltimore to Governor Sharpe, January 5th 1754, pages 18 & 19.

Sharpe to Calvert, April 17th, 1754, page 44 and following; especially see page 49.

Sharpe to Calvert, January 6th, 1754, page- 70 & 72.

Calvert to Sharpe, December 10th, 1754, page 130.

XXXIV. Act of the General Assembly of Virginia, creating the county of Hampshire, passed on the — day of ——, 1753, found in 6th Henning's Statutes at Large, page 376.

XXXV. Act of the General Assembly of Virginia, of 1785, creating the county of Hardy, 12th Henning Statutes at Large, page 86.

XXXVI. Act of the General Assembly, of Virginia, passed, 178- enlarging county of Hampshire, 12th Henning Statutes at Large, page 597.

XXXVII. Acts of the legislature of West Virginia of 1866,

chapter 29, creating the county of Grant out of the Western part of Hardy.

XXXVIII. Acts of the legislature of Virginia, passed on the — day of —— 1787, creating the county of Pendleton.

XXXIX. Act of the General Assembly of Virginia, passed on the — day of —— 1776, creating the county of Monongalia, — Henning's Statutes at large, page —.

XL. Acts of the legislature of Virginia, passed on the — day of —— 1784, creating the county of Harrison, — Henning Statutes at large, page —.

XLI. Act of the General Assembly of Virginia, passed on the — day of —— 1818, creating the county of Preston, — Henning Statutes at large, page —.

XLII. Acts of the legislature of Virginia, passed on the — day of —— 1856, creating the county of Tucker, — Henning Statutes at large, page —.

XLIII. Acts of the Legislature of West Virginia, being
3277 chapter 85 of the Acts of 1866, and chapter 50 of the Acts of 1881, granting the charter to the West Virginia Central & Pittsburg Railway Company.

XLIV. Act of the General Assembly of Maryland, passed February 28th 1827, granting a charter to the B. & O. Railway Company.

XLV. Acts of the legislature of Virginia, passed March 8th, 1827, and March — 1847, page 86; granting charter to the B. & O. Railroad Company, and authorizing it to complete its road through the territory of Virginia over the route thereby prescribed.

XLVI. First constitution of Virginia, sec. 21, adopted June 29th, 1776, as found in 1st revised code of Virginia, page 33.

XLVII. Compact between Virginia and Maryland, as to the jurisdiction over the Potomac River, dated March 28th, 1785, ratified by the General Assembly of Virginia, by Act of January 3rd, 1786, found in 1st revised code of Virginia, page 53, chapter 18.

XLVIII. Act of the General Assembly of Maryland, of 1781, chapter 20, appropriating the lands West of Fort Cumberland, as bounty lands for her Revolutionary soldiers.

XLIX. Resolutions of the General Assembly of Maryland, April Session, 1787, authorizing the governor and council to appoint some skillful person to lay out said lands into lots of fifty acres.

L. Certified copy of the map of Francis Deakins of the military lots laid out by him under the above resolutions, West of Fort Cumberland, filed with the answers in this cause, as defendant's exhibit H.

LI. Copies of the course and distance of all lots on said map which adjoined the line drawn from the Fairfax stone to the Pennsylvania line, which is filed with the answer in this cause, marked, Defendant Exhibit I.

3278 LII. Act of the General Assembly of Maryland of 1818, chapter 206, for the appointment of commissioners to settle the Western boundary of the State.

LIII. Act of the General Assembly of Virginia, passed February 28th, 1822, chapter 14, for the appointment of commissioners to settle the Western limits of the State, to commence at the Fairfax stone.

LIV. Act of the General Assembly of Maryland passed the — day of —— 1825, providing for the appointment of Commissioners.

LV. Report of Maryland commissioners appointed by said Act of 1825, which was transmitted to the governor of Virginia in June, 1832, found in Journal and Documents of the House of Delegates of Virginia of 1832-1833.

LVI. Act of the Legislature of Virginia of March 20th, 1832, page 308, directing the governor to procure a copy of the decision of the king, of the controversy between Lord Fairfax and the colony in regard to the Northern Neck of Virginia.

LVII. Report of Chas. J. Falkner under the above resolution and published in Kercheval's History of the Valley of Virginia, Chapter 13, and Lewis' History of West Virginia, Chapter 17.

LVIII. Act of the General Assembly of Virginia, passed on the — day of —— 1833, page 24.

LIX. Resolution of the General Assembly of Maryland adopted March 14th, 1834, Acts 1833-1834, resolutions No. 80 directing the Attorney General to institute suit in the name of the State of Maryland against the Commonwealth of Virginia for the settlement of the Southern and Western boundaries.

LX. Resolutions of the Legislature of Maryland, adopted
3279 March *March*, 21st, 1835, Acts of 1835, Resolution 99, directing the Attorney General to discontinue said suit.

LXI. Acts of the Legislature of Maryland, passed March 27th 1852, Chapter 275, authorizing the appointment of a commission to act with the commission to be appointed by Virginia to cause the line from the Fairfax stone to the Pennsylvania line to be accurately surveyed, traced and marked with suitable monuments, beginning therefor at the Fairfax stone, etc.

LXII. Acts of the General Assembly of Virginia, passed March 3rd, 1854, Acts 1854, chapter 1, providing for the appointment of a commission to act with the Maryland commission in running the boundary line beginning therefor at the Fairfax stone on the Potomac river etc.

LXII*a*. Joint report of commissioners, McDonald and Lee, together with the message of Governor Wise and Governor Letcher, also report of Lieutenant Michler, contained in pamphlet, filed with defendant's answer in this cause, marked, Defendant's Exhibit J.

LXIII. The work prepared by commissioner Lee, which is filed with defendant's answer, marked Defendant's Exhibit K.

LXIV. Acts of the legislature of Maryland, passed March the 5th 1860, Acts 1860 chapter 385, adopting the Michler line, as the Western boundary of the State.

LXV. Copy of the map made by Lieutenant Michler, of said line, which is filed with the answer in this cause, marked, Defendant's Exhibit O.

LXVI. Message of Governor Hicks of Maryland to the legislature, January session, 1862, as found in the Senate Journal and documents of Maryland 1861-2.

LXVII. Maryland constitution of 1856, section 8, as found in Charters and Constitutions, part I. page 857.

3280 LXVIII. Acts of the Legislature of Maryland of April 1st, 1872, creating Garrett county.

LXIX. Acts of the legislature of Maryland of 1886, being chapter — of the acts of 1886, incorporating the Piedmont & Cumberland Railway Company.

LXX. Chapter 59 of the Acts of the legislature of Maryland 1888, amending the charter of Piedmont & Cumberland Railway Company.

LXXI. Chapter 94 of the Acts of the legislature of Maryland of 1865, providing for the publishing of Martenet's map of Maryland.

LXXII. Copy of Martenet's map of Maryland, filed with the answer in this cause, marked Defendant's Exhibit L.

LXXIII. Map accompanying Thomas Hutchins' topographical description of Virginia, Pennsylvania, Maryland and North Carolina, reprinted in 1904 from the original edition of 1778, filed in the library of Virginia.

LXXIV. Final report of Virginia commissioners on the Maryland and Virginia boundary, to the Governor of Virginia 1874, which is filed with the Defendant's answer in this said cause, marked Defendant's Exhibit H.

LXXV. The journal and report of the proceedings of the joint commissioners to adjust the boundary lines of the States of Maryland and Virginia, as published by the State of Maryland in 1874.

LXXVI. Copy of the map made by Eman Bowen, geographer to his Majesty made under the treaty of Paris, February the 10th 1763, between Great Britain and France, which is filed with the answer in this cause of Defendant, Exhibit P.

LXXVII. Copy of the map made by John Mitchell in 1755, which is filed with the Defendant's answer, marked Exhibit —.

3281 LXXIX. Report of the Virginia commissioners, 1873, page 115, being Exhibit A, filed with the Defendant's answer.

LXXX. Narrative and Critical History of America, by Justin Windsor, Librarian of Harvard University, volume 3, pages 131, 148, 153 to 168; 517, 536 to 542, and 554.

LXXXI. Topographical map made from the United States Geological Survey of the territory in dispute in this cause.

LXXXII. State of West Virginia also offers in evidence the depositions of the several witnesses taken by her in this cause, together with all the exhibits mentioned in and filed with said depositions.

LXXXIII. The report of Julius K. Monroe, surveyor of the surveying done by him in this cause, and the maps prepared by him and exhibited by his testimony entitled "State of Maryland *vs.* State of West Virginia in the Supreme Court of the United States, map No. 1, map No. 2, and map No. 3."

Certificate.

STATE OF WEST VIRGINIA,
Preston County, To-wit:

I, Neil J. Fortney, a Notary Public within and for the county and State aforesaid, duly commissioned and qualified, do hereby certify that the above named witnesses, A. M. Fike, Silas R. Fike, H. H. Beckman, Joseph Guthrie, E. G. Albright, Wesley DeBerry, Lloyd Dawson, A. J. Thomas, Julius K. Monroe and Jermanous Thomas, were by me first severally sworn or affirmed to testify the truth, the whole truth and nothing but the truth, and their depositions were taken before me on the 23rd and 24th days of
3282 July, 1907, at the court-house in the town of Kingwood, Preston county, West Virginia, in accordance with the stipulation of counsel hereto annexed.

In witness whereof I have hereunto signed my name and affixed my notarial seal this 20th day of August 1907.

NEIL J. FORTNEY, [SEAL.]
Notary Public.

Taxation of Costs.

Witness' fees:

A. M. Fike, two days and 52 miles	$4.60
Silas R. Fike, two days and 52 miles	4.60
H. H. Beckman, two days and 52 miles	4.60
Joseph Guthrie, two days and 44 miles	4.20
E. G. Albright, two days and 28 miles	3.40
Wesley De Berry, one day and 60 miles	4.00
Lloyd Dawson, one day and 80 miles	5.00
A. J. Thomas, two days and 60 miles	5.00
*Julius K. Monroe	2.00
Jermanous Thomas, two days and 52 miles	4.60
Notaries fees	5.00

Paid by J. K. M. for Geo. E. Price.

Stenographer's fees:

To two days' services taking testimony $10.00 per day	$20.00
Expenses Parkersburg to Kingwood and return, including R. R. fare, Pullman fare, dining cars and hotels	14.70
To transcript of testimony	73.45
	$108.15

The above fees were paid by George E. Price, Counsel for Defendant.

[* This line erased by pencil in copy.]

3283 In the Supreme Court of the United States. In Equity.

STATE OF MARYLAND
vs.
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Exhibits filed herewith "D. S. Lewis Exhibit A," "Price Exhibit A," and "Julius K. Monroe Exhibit X."

3284 In the Supreme Court of the United States. In Equity.

STATE OF MARYLAND
vs.
STATE OF WEST VIRGINIA.

Depositions of Daniel Sheffey Lewis, Julius K. Monroe, and George E. Price, taken before Jno. Lewis Smith, Notary Public, District of Columbia, pursuant to agreement of counsel, at the Hotel Raleigh, City of Washington, District of Columbia, on the 17th day of September, 1907, to be used as evidence on behalf of the State of West Virginia in the above entitled cause now pending in the Supreme Court of the United States.

Present: Edward H. Sincell, Counsel for the State of Maryland, and George E. Price, Counsel for the State of West Virginia.

DANIEL SHEFFEY LEWIS, a witness of lawful age produced on behalf of the State of West Virginia, being duly sworn on his oath deposes and says:

Direct examination.

By Mr. PRICE:

Q. Please state your name, your age, your place of residence and your occupation?

A. Daniel Sheffey Lewis; sixty three years of age nearly sixty-four; residence Harrisonburg, Virginia; am by occupation the editor and publisher of a newspaper. I have been an attorney but have not practiced for a number of years—I quit that long years ago.

Q. Where were you born and where have you resided during your lifetime?

A. I was born in Rockingham County, Virginia, on the Shen-

andoah River, and have resided there nearly all my life. I resided in Culpeper County, Virginia, two or three years, I do not
3285 remember exactly how long, and in Danville, Virginia, three years, I believe. I returned to Rockingham County in 1879.

Q. Have you resided there since that time?

A. Yes, sir.

Q. Who was your father?

A. John F. Lewis.

Q. Did he also reside in Rockingham County, Virginia?

A. Yes, sir.

Q. Who was his father?

A. Samuel H. Lewis, generally called General Samuel H. Lewis—he held a commission as general.

Q. Who was the father of Samuel H. Lewis?

A. Charles Lewis—I do not think he had any middle name.

Q. Who was the father of Charles Lewis?

A. Thomas Lewis—the first surveyor of Rockingham County, Virginia.

Q. Who was Thomas Lewis descended from?

A. John Lewis was the first of the family that ever came to America.

Q. He settled where?

A. In Augusta County, Virginia, about two miles and a half from Staunton—north of Staunton.

Q. What children did John Lewis have—what sons?

A. He had one that died without issue I forget his name. His second son was Thomas Lewis, then Andrew, William and Charles. That however was not the Charles Lewis I referred to before.

Q. You are descended then from Thomas Lewis who was a brother of General Andrew Lewis?

A. Yes, sir, and of Colonel Charles Lewis who was killed at the battle of Point Pleasant.

Q. Is there any tradition in your family as to Thomas Lewis having been employed on a survey of the boundary line of Lord Fairfax' grant at any time?

3286 A. Well, I have heard my grandfather talk about it when I was a boy, and he had a little memorandum book that was said to have been kept by Thomas Lewis, the surveyor. I do not remember when I first saw it, but when I was a small boy among other things I saw it when talking about the family. I remember seeing it but could not tell when.

Q. Your grandfather's name was what?

A. Samuel H. Lewis.

Q. Where did he live at that time?

A. On the place called Lewiston—the same tract of land that Thomas Lewis bought in 1746, the same year the survey was made.

Q. You say you saw the memorandum book?

A. Yes, sir.

Q. More than once?

A. Oh yes, the first time I saw it I do not remember exactly, but

later on after Grandfather gave it to Father when people would be talking about the family and about old surveys or anything of that sort this book was several times brought out. Father had it in the house—I do not remember the last time I saw it but think it was about 1879, that is when I came back to Harrisonburg to live. I did not know what had become of it until my sister was writing to find out and when you wrote to Lunsford Lewis and my father, and my brother sent the letter to me, I think. His name is John F. Lewis and he knew the letter was not for him and sent it to me.

Q. Mr. Lewis, do you think you could identify that memorandum book if it were produced?

A. Oh, yes, sir. It is very familiar to me, altho- I never read it through,—I have seen it many times.

Q. Will you look at the memorandum book which I now hand you and please state if you recognize it?

A. Yes, this is the book—I know the handwriting and all.

3287 Mr. PRICE: Defendants file said book as part of the deposition of this witness with the understanding that a copy may be substituted and the original withdrawn by consent of counsel at any time.

(Said book filed herewith by Notary Public, marked "D. S. Lewis Exhibit A.")

Mr. SINCELL: Counsel for the plaintiff objects to the introduction of the book above mentioned.

Q. Did I understand you to say the Thomas Lewis who is said to have kept this memorandum book purchased the farm or land in Rockingham County, Virginia, where your grandfather lived at the time he had this book in charge?

A. Yes, sir—he bought it in 1746.

Mr. SINCELL: Question and answer both objected to on the ground that the record is the best evidence of the purchase and title to the land above mentioned.

Q. What is the tradition in the family as to where he resided up to the time of his death?

A. He resided right there on what is known as Lynnwood—Lewiston and Lynnwood are part of the same tract. Grandfather lived at Lewiston, and Thomas Lewis lived at Lynnwood. He resided there and died on that place—he lived and died there on the place that he purchased—it is two or three miles from Port Republic.

Q. Is that the same place where your father also lived and died?

A. Yes, sir.

Q. And is that the same place where you saw this book in the possession of your father?

A. Yes, sir. The first time I remember seeing it was in the house my grandfather built on part of the old farm and called it Lewiston. That is where I first saw the book—it s part of the same tract but was divided by grandfather getting that part as one of the sons

and building his house there. Then I have seen it at the old
3288 place where my father lived. Father lived at the old place where Thomas Lewis used to live. The houses are within three-quarters of a mile of each other.

Q. What is the tradition in your family as to the profession and occupation of Thomas Lewis?

A. Well, he was a farmer and a surveyor. He and General Washington surveyed and took up some lands together which they divided after the Revolutionary War, when Washington came there to our house.

Q. Is your father living or dead?

A. He is dead.

Q. When did he die?

A. He died in 1895.

Q. Did he have a daughter named Mrs. Davis?

A. Yes, sir, my sister Helen married Lewis S. Davis of Greenbrier County, West Virginia.

Q. Did she live with your father just before his death?

A. Yes, sir, she was living there at the time of his death. Her husband had died some years before and she was living with my father.

Q. Your grandfather is of course also dead?

A. Yes, sir, he died, I reckon in 1870, either 1869 or '70.

Mr. PRICE: That is all.

Cross-examination.

By Mr. SINCELL:

Q. Are you acquainted with the handwriting of Thomas Lewis?

A. Only by what was said. I have seen some letters from him, and that book was said to be his handwriting. Of course I never saw him, he was dead long before my time.

Q. Your information and knowledge of his handwriting is entirely a matter of tradition?

A. Yes, sir.

3289 Mr. SINCELL: That is all.

Whereupon the witness was excused.

GEORGE E. PRICE, a witness of lawful age, produced on behalf of the State of West Virginia, after being first duly sworn on oath deposes and says:

A. I am Assistant Counsel in this cause for the State of West Virginia. After we were employed in the cause in looking up testimony I learned that Mr. Thomas Lewis, who was given to me as one of the surveyors on the boundary line run in 1746 of Lord Fairfax's grant between the head spring of the Rappahannock to the head spring of the Potomac, was an ancestor of Judge L. L. Lewis of Richmond, Virginia. I wrote to Judge Lewis to know whether there were any documents in the possession of his family relating to

that survey. He referred me to his brother Honorable John F. Lewis of Rockingham County, Virginia. I then wrote to Mr. John F. Lewis and inquired of him as to whether there were any documents in his possession or in the possession of any member of the family to his knowledge relating to that survey, and I received a letter from Mrs. Davis who was his daughter, as she stated in the letter, enclosing a memorandum book which has just been filed with the deposition of Mr. D. S. Lewis in this cause, and stating that she sent it at the instance of her father John F. Lewis as the only thing they had that he knew of relating to that survey. I cannot produce the letters which I wrote to these people, nor the letters from them, they have been lost. I have made a search for them recently in my office and wherever I thought they could be found. I kept the memorandum book in the safe in my office and have had it in my possession from that time until now. This book was received by me as above stated sometime between 1891 and 1895, I should think about 1893 or 1894.

I have a copy of this book which was carefully made and
3290 I herewith file the said copy as a part of my deposition marked "Price Exhibit A."

Mr. SINCELL: I object to the filing of this book or a copy thereof as evidence in this cause.

Mr. SINCELL: No questions.

JULIUS K. MONROE, a witness of lawful age produced on behalf of the State of West Virginia, after being first duly sworn on oath deposes and says:

Direct examination.

By Mr. PRICE:

Q. Are you the same Julius K. Monroe who acted as surveyor in this cause, and whose depositions has been heretofore taken?

A. I am.

Q. I call your attention to the small memorandum book filed with the deposition of D. S. Lewis this day taken, marked "D. S. Lewis Exhibit A," and ask you if you have examined the courses and distances set forth in this book under the dates of Tuesday, 21st, and Wednesday, 22nd, in the month of October, leading up to the spring head of the Potomac as therein stated?

A. I have.

Q. Did you make a sketch, diagram or plat of those courses and distances as applied to surveys made by you in this cause?

A. I did.

Q. Look at the blue print which I now hand you and state what it is?

A. It is a plat of those courses and distances laid down in relation to the meridian lines from Fairfax Stone northward.

Q. And with reference to what streams?

A. With reference to the north fork of the Potomac River.

Q. Under the head of Tuesday, 21st, there is this language "At

about three in the afternoon Captain Winslow returned. He
3291 had the good fortune to find the marked trees at the head spring mentioned in their journal of 1736. This piece of good news was so very agreeable it seemed to inspire every one with new life and vigor. It was then resolved to run a traverse to the spring head from where we left off on Sunday night. Accordingly Mr. Brooke and I with the chain carriers went to the place and from thence West 400 poles to near our present camp where we left off. Being late continued this night in our old camp." Then under the head of "Wednesday, 22" this language, "Decamped very early and began where we left off last night, thence S. 60 W. 640 poles; N. 60 W. 127 poles; S. 45 W. 223 poles; S. 20 E. 80 poles; S. 8 W. 90 poles; S. 16 E. 92 poles; S. 70 E. 48 poles; East 26 poles; S. 71 E. 31 poles; S. 83 E. 27 poles S. 80 E. 6 poles, to the spring head." Have you laid down those lines according to the courses and distances upon the blue print which I hand you?

A. Yes, sir, I have.

Q. I notice you have represented the Potomac River on that blue print, is that correctly laid down according to the actual surveys?

A. It is laid down according to my own surveys down to the forks of the river about a mile northeast of point marked "Headwaters of Potomac." From that point to the beginning of 400 pole line, the first line mentioned in the notes, it is laid down from Mr. Brown's map filed in this cause.

Q. I will ask you to file that blue-print with your deposition marked "Monroe Exhibit X."

Mr. SINCELL: Counsel for the State of Maryland objects to the introduction of "Monroe Exhibit X."

Mr. PRICE: That is all I believe, Mr. Sincell.

Cross-examination.

By Mr. SINCELL:

Q. When did you make the plat of which this is a blue-print Mr. Monroe?

A. During the first part of September, 1907.

3292 Q. Did I understand you to say that you had located the lines upon this plat by actual survey?

A. No sir, only part of them—the river lines.

Q. When did you locate these river lines by actual survey?

A. In September, 1899.

Q. From what point and to what point did you locate them by actual survey?

A. It was located by actual survey in September, 1899, from the point where the line marked "Monroe reference line" crosses the same to a point at or near the forks of the stream east about a mile, I suppose, and from the point at which this reference line crosses the river to the Fairfax Stone by the notes of the survey of W. McCollough Brown, Surveyor in this cause on behalf of the State of Maryland.

Q. Isn't it a fact that in making up the plat from which this

blueprint was made that you simply laid these lines here by protraction?

A. Which lines do you refer to?

Q. All the lines.

A. The lines which are laid down and the courses and distances of which Mr. Price has just read were laid down by protraction, and the other lines were traced from the original map in this cause.

Q. What other lines were traced?

A. The streams, the Michler line and the Monroe Reference Line.

Q. Isn't this plat on a much smaller scale than the plats made in this cause?

A. It is the same scale as the plats made on behalf of West Virginia.

Q. The courses and distances which Mr. Price read from this note book were laid down in the reverse direction were they not from that given in the book, in other words, in laying them down upon this plat you reversed the lines?

3293 A. It is difficult to say—the lines were laid down separately, of course.

Q. But in laying down the lines which Mr. Price has read from this note book did you not start out at a point designated upon your plat "Fairfax Stone" and lay the lines down upon this plat by protraction, reversing them from Fairfax Stone.

A. We assumed the point which is noted in the Lewis book as "Spring head" to be identical with Fairfax Stone.

Q. You have spoken of the forks of the stream, that is, the Potomac River, is it not a fact that the stream forks west of the Michler Line as shown upon the plat?

A. It might be well to state the point I refer to as the branch of the stream flowing southward. That point is designated on the maps filed in this cause by the State of Maryland as "South prong."

Q. But the river forks west of the Michler line?

A. There is a fork west of the Michler line.

Q. One branch running around to Fairfax Stone and the other up what has been designated by the State of Maryland in this cause as Potomac Spring?

A. Yes.

Mr. SINCELL: That is all.

Redirect examination.

By Mr. PRICE:

Q. Assuming as you did that the point designated on maps in this cause as Fairfax Stone and the point spoken of in the Lewis memo. book as "Spring head" to be the same, and laying down the river from that point according to the surveys as you have stated, and then laying down and platting the courses and distances as given you from the book reversing from the Fairfax Stone, would you strike the main river at the end of the 400 pole line as shown on that map?

A. Yes, sir, as nearly as we could determine.

3294 Mr. PRICE: That is all.

Recross-examination.

By Mr. SINCELL:

Q. I understand, however, that you did not run the 400 pole line by actual survey?

A. We did not.

Q. But merely laid it down by protraction for illustration upon this map?

A. Yes, sir.

Q. Therefore it is a question whether you would strike the river upon actual survey?

A. A question as to whether we would exactly strike it. It might not strike exactly but would strike very nearly to it.

Mr. SINCELL: That is all.

Redirect examination.

By Mr. PRICE:

Q. If you take these courses and distances and reverse them from the point designated as Potomac Stone on Map of Mr. Brown filed in this cause would you at the end of the 400 pole line strike the main Potomac River?

A No, sir.

Mr. PRICE: That is all.

Recross-examination.

By Mr. SINCELL:

Q. If the party who made the memo. book from which you have taken those courses and distances never ran to Potomac Spring as marked in this cause, of course, the lines laid down upon this plat would not strike the river by reversing or running direct, would they?

A. They would not.

Mr. SINCELL: That is all.

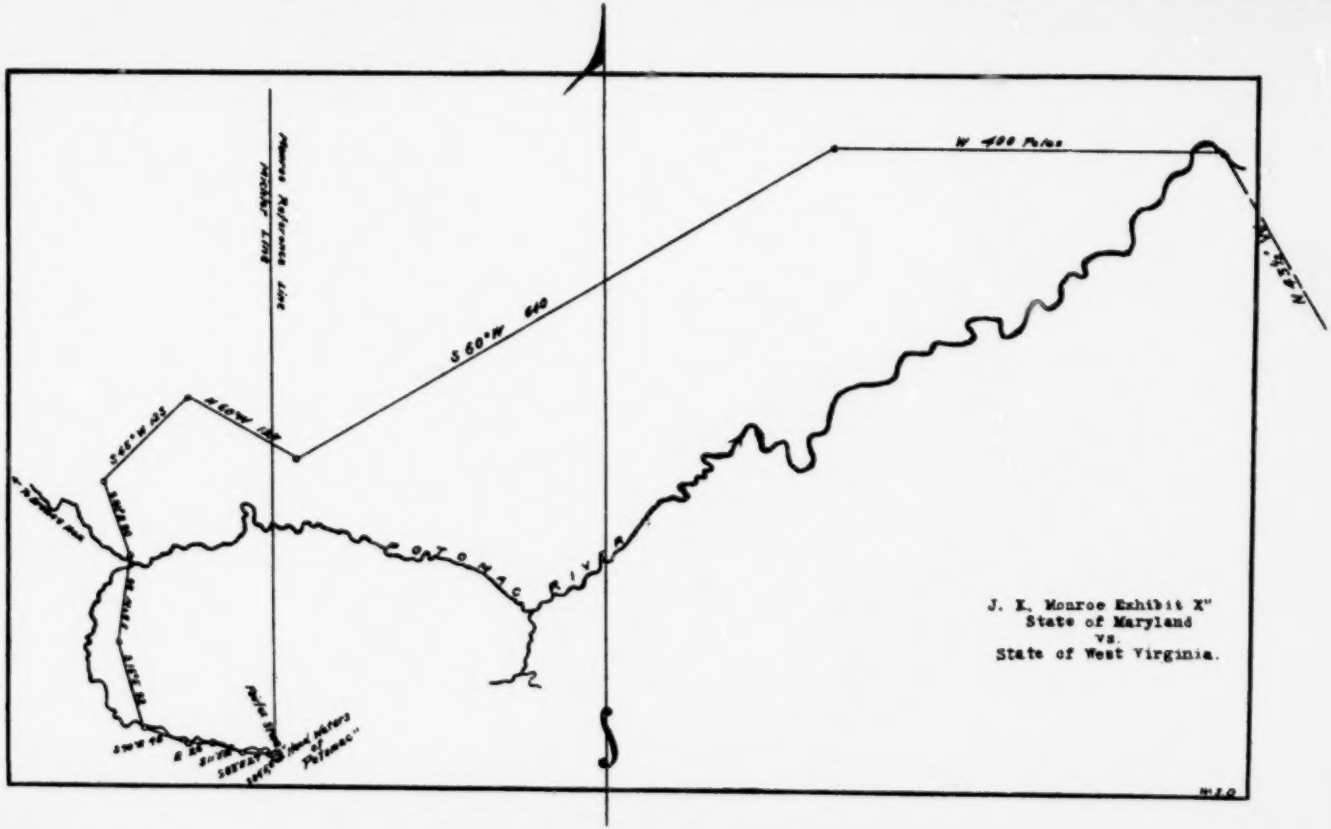
Whereupon the witness was excused, and the hearing closed.

3295 In the Supreme Court of the United States. Equity.

STATE OF MARYLAND
vs.
STATE OF WEST VIRGINIA.

DISTRICT OF COLUMBIA, *ss:*

I, John L. Smith, A Notary Public of the District of Columbia, in and for the said District, do hereby certify that Daniel Sherrey Lewis, Julius K. Monroe and George E. Price were first duly sworn and their depositions were taken before me on the 17th day of September, 1907, at the Hotel Raleigh, in the City of Washington, Dis-


W 400 Poles
S 60° W 640
S 45° W 85
N 60° W 180
POTOMAC RIVER
J. K. Monroe Exhibit X"
State of Maryland
vs.
State of West Virginia.

trict of Columbia, in accordance with the stipulation of counsel hereto annexed.

In testimony whereof I have hereunto signed my name and affixed my notarial seal this 17th day of September, 1907.

[SEAL.] (Signed) JNO. LEWIS SMITH,
Notary Public, D. C.

3296 In the Supreme Court of the United States. Equity.

STATE OF MARYLAND
vs.
STATE OF WEST VIRGINIA.

It is agreed that the depositions to be taken by the State of West Virginia at Washington, D. C. on the 17th day of September, 1907, may be taken before a Notary Public without notice the plaintiff appearing by counsel and waiving notice, and may be certified in the usual manner under the seal of the Notary Public; that they may be taken down by a stenographer in shorthand writing and afterwards transcribed by him from the stenographic notes each party waiving the signatures of the witnesses to their respective depositions.

(Signed) EDWARD H. SINCELL,
Ass't Counsel for the State of Maryland.

(Signed) GEO. E. PRICE,
Ass't Counsel for the State of West Virginia.

Endorsed: Supreme Court of U. S. State of Maryland *vs.* State of West Virginia. Depositions of D. S. Lewis, George E. Price and Julius K. Monroe. Taken at Washington, D. C. September 17th, 1907. Supreme Court, U. S. No. 1, Original, Oct. Term, 1907. Maryland *v.* West Virginia. Filed Oct. 15, 1907. Office Supreme Court U. S. Filed Oct. 15, 1907. James H. McKenney, Clerk.

(Here follows Exhibit X—map.)

[Endorsed on back of map.]

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"J. K. MONROE EXHIBIT X."

State of Maryland *vs.* State of West Virginia.

Jno. Lewis Smith, Notary Public, D. C.

Office Supreme Court U. S. Filed Oct. 15, 1907. James H. McKenney, Clerk.

3297 Journal 1746.

From Head Rappahanock to the Head of Potomack Running Fairfax Boundary.

"PRICE EXHIBIT A."

STATE OF MARYLAND
vs.
STATE OF WEST VIRGINIA.

3298 Wensday, September 10th, 1746.

Set out from home in order to wait on his majestys & the Right Hounrable Thomas Lord Fairfax Comissioner at Capt. Downs from thence to proceed to Run the Dividing Line Between his majesty & Ld. Fairfax from the head Spring of Rappahanock to the head Spring of the North Branch of Potomac. Lay at Michael Wood this night having Road about 20 miles.

Ex. a

Thursday Set out very early was very sick most part of the Day got to one Franklins about 35 miles where I was obliged to put up

Ex. a

Friday Set out about 9 got to Capt Downs, where was Col. Fry one of his maj Commisioners, Col. Jefferson one of the Surveyors for his majesty & Capt. Winslo for Ld. Fairfax. after having eat Breakfast (of which I stood in great need having Eat nothing since yesterday morning) Being about 10 o th Clock Came the Honourable Wm. Fairfax & Col. William Beverley Esqr his Lordships Commisioners Likewise Col. Lomax one of his majestys Comisioners Likewise George Fairfax Esq. & Mr. Robart Brook one of his majesty Surveyors with whom I had the pleasure of spending the Day very agreeably in the Evening the Bagage for the Expedition was Brought by Vernons wagon.

Saturday 13th nothing Considerable Could be Done the Bagage horses not Being Brought according to the expectation & agreement of ye Comiss a great number of the Neightboring Gentlemen Came to See us at our Camp which we had Pitched the Day Before in an Old field by Cap Downs house. In the Evining Mr. Campble
3299 Brought the Bagage horses for the use of the Expedition &c.

Sunday 14th Most of the Gentlemen went to hear Mr. Marshal preach who Returned with them to Diner. Severals of us Sollicted him to preach us a Sermon Before we set off he after making Several Religious Evasions Shew,d us the Impossibility thereof & Bid us farewell.—

Monday 15th we were Joyned by Col Peter Hedgman one of his majestys Comisioners. Spent most of the Day Inspecting Campbles

horses brought for the use of the Expedition 14 whereof was passed &c. Bought a pair of Pumps from Vernon price 10 Shilling.

Tusday 16th, Spent the Day in preparing for our Journey &c. in the Evining Returned to our Camp where we spent our hours with a great Deal of pleasure & meriment was taken Ill in the night Violent vomiting &c

Wensday 17th. Continued to pack up our Bagages had our Instruments try'd notes taken of their variations or Different Directions. Spent the Remaning part of the Evining in our usual manner This night we were allarmed with a Quarrall that happned in Capt Downs lane amongst a Crow'd of Drunken people the Rails & Staks of Capt Downs fence Supply'd the want of Cudgels which they apply'd with tolarable good sucses.

18th Thursday

Our Bagage Being all packed up one part thereof was Sent of under the Direction of Mr. Anthoney one of our Stewards by the way of Swift Run Gap to be in Readyness to Joyn us when we got over the Blew Ridge the other part thereof under the Direction of Mr. Genn another of our Stewards to the head of the Conoway where we were to Begin

Fryday 19th. We set off from Capt Downs with Expecta-
3300 tion of Reaching ye head of the Conoway that night Colo Fairfax & Colo Beverley out Rode the Rest. We call,d at Kirkleys & Regald our selves with Some very good Syder and So Set forward Night Coming on we were obliged to Encamp in the mountain Before we got to ye Spring-head with Mr. Genn part of the Bagage which we overtook some time Before Colo Fairfax & Colo. Beverley who as I observed Before out Rode us got to the head of the River that night Being guided by Kirkley

Saturday 20th the mountains made Such a Dismal appearance that John Thomas one of our men took Sick on the Same & So Returned home.

We set forward as Soon as Possible we got to Colo. Fairfax &c. Camp at ye head of the River about 12 o clock. the Comisrs Rode out in the Evining in Order to Discover which Branch the Survayors in 1736 measured up but Could not be fully Satisfied of the Same This night we took the variation of the Needle & found it to be 3st Degrees West

Sunday 21th The Comisioners Surveyors &c. Spent most of the Day to Discover which Branch made the head Spring found some mark,d trees but by whom mark,d was very uncertain. Returned to our Camp very much Fautaug'd—Several horses very much hurt amongst the Rocks on the mountain.

Monday 22,d As the Comisrs Could not be fully Satisfied as to the proper place of Beginning They at Lenght Concluded to Survey three Sundry Branches in order to Discover the Right or main Branch in Consequence whereof Colo. Jefferson Capt. Winslo Mr. Brook & I went to the forks of sd Branches in order to Survey them Colo. Jefferson Capt Winslo measured up the South Branch & Mr

Brook & I the North Branch The courses & Distances thereof
3301 as Followeth viz from the Fork
N 22½ (18) pole the Fork of the midle Branch 34 poles &
N 10 W 126 poles
N 4 E 42 poles
N 20 W 20 po
N 2½ 40 po
N 20 W 122 po
N 14 E 42
N 8 W 40 po
N 10 E 60 po to the highest water near the top of the mountain
Then we went Back to the midle Branch Beginning 18 pole above where we Began Before Thence up the Same—
N 52 W (26) the mouth of our Camp Branch) 30 poles
N 40 W 43 poles
N 20 W 82 po
N 4½ W 20 po
N 21 W 24 po
N 39 W 56 poles to some markd trees viz one white oak T W on Cinamon I R I R MMH M O Last Course continued till Seventy 72 poles
We then Returned to our Camp & after plotting the Several Branches presented the Comsrs with a plan of the same
Tusday 23,d the Comisioners not Being fully Satisfyed & for the Better fixing the place of Beginning thought proper to survey the River from the Pocoson fork up to where we Began Before Accordingly Colo. Jefferson Capt Winslo Mr Brook & I with our Bagage Set off & went Down to Said Fork in order to Survey the Several
Courses of the Same N. B. the west fork by much the smallest
3302 Bears up S 65 W & is that which makes the place calld the
Divels Jump Then up the main Fork
N 25 W 32 poles 8 from Riv to ye Rt
N 10 W (20) po 20 from Riv 40) 18 from Dito (60) 10 from Dito (80) 8 from Dito (108) 10 from Dit
N 22 E 36 poles (15) from River
N 56 E (20) 25 fr Riv (40) 10 fr Dito

63 poles X River

N 5 E (20) poles 10-fr. Riv on the left (40) 20 from Dito—66 X Riv 110) po 20 from Dito on the Rt
N 45 E 40 po) 30 from Riv 85 X Riv
N 80 E 12 po)

Riv on ye Left

N 10 W 21 po)
N 20 E 56 pole) 8 from Riv
N 5 W 54 x Riv 86 po by Dito on Rt
N 48 W 17 pole the mouth of the Divels Deep Branch oposite to a small Island on the Right ye Branch Bears up West—
N 14 E 17 poles
N 15 E 56 poles

N 21 E 28 poles Night Coming on *on* we left off & Encamped at the same place where we Lay last Friday night as we went up the River

Wensday 24th Rain'd in the morning it Clearing up about 9 o the Clock we Began from where we left off

3303 N 5 E 22 X Riv 36 po a Branch Comes in to the River on East Side 42 pole X Riv 2 po on ye left

N 27 W 20 po 8 from Riv 103 X Riv

N 5 E 81 po X Riv 96 po a Br Run to ye Left into the River 114 X mouth of a Br on Rt 170 by the River

N 50 E 42 poles (10) from Riv

N 3 E 73 po 10 from Dito

N 32 W 8 X a Br. 16 poles

N 3 E 30 pole 10 from River

N 46 W 43 poles

N 53 W 46 po

N 31 W 27 po 8 from Riv

N 47 W 30 po

N 65 W 38 po 10 fr Dito

S 70 W 13 poles to the fork we Began at Before. Thus we finished and got to our Camp about 12 o clock Then Plated the River and gave the Commissioner a plan thereof.

Thursday 25th The Comisioners at Length agreed to Begin at the head of the Branch whereon the markd was found that agreeing Best with plan of the former Surveyors. We Began accordingly at a Red oak & 5 Cotton trees & Run from thence N. W. the variation Subtracted our Course according to the Compass was N 41¾ W 110 poles the top of the Blew Ridge the End of the Peeked mountain Bears S 75 W. hear the Gentlemen Comsr thought it impracteable to follow us over the mountains therefore parted from us & made the Best of their way to Shenando Leveing som Bagage horses to Cary our tents & Some provisions 320 X a small Br Runs to Right 530 X the South Br. of Naked Cr. Runs to Left at the foot of the Blew Ridge 770 pole the top of another mountain. Our

3304 Bagage by Reason of the Badness of the way lost Sight of us & not knowing how to follow Encampt on Naked Cr. the last Branch we Cross't we obliged us to goe Back to them.

Fryday 26th measur Continued 1000 po X the So. Br of naked Creek 1220 top of a mountain 1880 top of another mt. 3034 masenuten Gap Bears N 20 W) We had just got over the mountains as night come and encamped at the foot thereof

Saturday 27th measure Hill Continued 3320 poles to a pine on the West Side of Shanando River. hear we were obleged to Stop to be Supplyd with some fresh provision the Comisioner who had Encamped at Loungs came up the River to us where we all Dined & Regald ourselves with Several Black Jacks of punch and afterward went with the Comisioner to their Camp at Loungs

Sunday 28th Spent in Camp this night took variation of the Needle which we found to be one & a half Degrees West

Monday 29th it Being Imposible to take our horses over the Peeked mountn. they were sent over Masenuten Gap with *with* the

Comisioner & Bagage Mr. Brook and I went up to where we left off on Saturday & from Thence N 43½ W 180 pole 10 from River
764 po the first tope of the Peekd Mt
920 another top of Dito
1000 X a Br. Calld the fountain of life from the Seasonable Relive it was to us the Day Being Exceding hot ye mountain very high & Steep we were all most over-come & Ready to faint for want of water
1160 the East top of Dito
1320 the Bottom of Dito
1820 left off at a pine tree near a path Being allmost Dark we had the good fortune to meet a man who Conducted us to Peter
3305 Shoals where Our Company had Encamped next morning Bought a pair of shoes price 7 sh

Tusday 30th Colo. Jefferson & Capt Winslo Began where we lef off the Day Before. Our Bagage Did not get all together Before this Day Mr Brook & I in Company with the Comisioners & Bagage But Being missguided could not overtake them to Day & were obleged to Encamp on the No. Branch of Shanando

Wensday October 1th Set forward with our Bagage in order to overtake Colo. Jefferson & Capt Winslo wh we Did about 2 o clock at John Dobins. Their notes for Tuesday
216 pole X Smith Creek Runs to Rt
429 X ye Indian Road
810 X ye North Br. of Shanando
1600 poles a pine mark,d 21 miles
Wensday Worke & from the m'd pine
206 poles masenuten Gap Bears 60 E
960 poles a tree md 24 miles in Dobin, Corn field
1000 the Totall for this Day we Encamp'd in Dobins meadow Raind in the Evining

Thursday 2d Raind Colo. Fairfax not Being able to undergo the fautague of Journey Returned home Began at ye End of 1000 pole Thence
620 X the head of Benj Allens mill Creek
1560 top of Black Jack mountain
1640 X ye head of Stoney Cr Encamped on sd Br.

Friday 3d Began at ye End of 1640 pole Run the Day Before Thence 604 pole ye top of ye Divels Back Bone alies the north mountain a chestnut oak md 31 miles.
824 X a Br. of Shand Runs to left
3306 1104 pole left off & Encamped on ye aforesaid Branch it was late Before ye Comisioners & Bagage Could Come up this Day Several of the horses had like Been Kill'd tumbling over Rocks & pricipices & ourselves often in the outmost Danger this tirable place was called Purgatory

Saturday 4th Began at the End of 1104 pole Run the Day Before Thence 140 pole a white oak md 33 miles
206 poles X the Road from Willins mill to Cape Capon here the Comrs. thought it best for themselves & Bagage to take along the Road to the South Branch we tooke our own horses with two

Bagage horses with some provision with us along the line & so parted about 12 O the Clock one of our men Soon after Kill,d two Small Deer &c

700 pole the tope of a mountain Cap Capon Bears Down N 30 E-

1520 poles the top of another mountain

1680 a Br. of Cap Capon Run to Right on which we Encamp'd

Sunday 5th our Situation was Such we Could not lye by our horses were Starving our provision not being Sufficient for us more than one Day made it a work of Necesesity for us to press forward Began at the End of 1680 pole Run ye Day Before Thence

80 pole a pine md 38 miles on a mountain

400 po a Chestnut md 39 miles

700 po X a Br. of Cap Capon Runs to Rt

720 a white oak md. 40 miles a Deep Valley all the way parallel to our Course

880 po top of a mount Divids the waters of Cape Capon from thos of ye So Br

1380 poles on the top of a very Steep mount here we were obleged to leave off it Being allmost Dark our Bagage we had gon

3307 Down the mountain Before we knew not where they had piched our tents nor knew we how to get Down the mountain Being Extremely high & very Rocky and now Quite Dark & had our horses to take Down Seting off at all Adventures we fell into a valley Between two Spurs of the mount we had allmost precipices on eithe hand the valley very narrow full of Loges & Brush & Exceeding Rockey & a very great Decent We had like Been killd with Repeated falls in this Case you may Be sure our horses were in a miserabl condition the lose Rocks were often so very complesant as to Convey us a Considerable way Down & had like very often proved very fatal to us we at length got to the Bottom nor was our Case then much Better there Being a large water Course the Banks Extremly Steep w'c the neightbourhood of the mounts obliged us to Cross very often at places or Banks allmost perpendicular. After a great whiles Dispair we at length got to our camp about 10 o Clock hardly any of us Escaping without Broken Shins or Some other miss-fortune

Monday 6th Went Back to the top of the mountain & Began at the End of 1380 pole Run the Day Before—

682 poles to the South Branch of Wapacomo allies the So fork of the South Branch Hear we were Obleged to Encamp to Recrut our horses who had nothing to live on Since we left Dobins & get a Supply of provisions hearing the Comsrs were about 5 or six miles Blow us on ye aforesaid Branch Mr Brook Road Down to them & after piching our tent Colo. Jefferson & I went Down the River to Discover Some Inhabitants that we might get some provision Saw but one familey of poor Duch people from whom we Could have no Supply Then Returned to our Camp Mr Brook not Returning till in the night Did not Bring us Such a Supply of provision as we thought proper to pursue our Jurney with. The

3308 land on this Branch is exceding good for about ½ of a mile in Breadth This Day Cloudy & Raind a little

Tusday 7th Cloudy & Ran'd Sent a messenger by whom we wrote to the Comisioners for Some more provisions Clearing up about 9 O'clock we Began at the End of 682 poles Thence Began to assend a mountain Extremly Steep

620 pole a pine md. 46 miles on the of a very high mountain from whence we Could Discover the Settlements Down Wapocomo as far as the old town very Distinctly hear our mesenge Returned from the Comsrs with the provision

1080 poles Encam'd This mountain Exceeding high it was with great Difficulty we Could get our horses over. we were very much put too for want of water we Could find no other than a standing pudle wherein the Bears used to wallow which we could not teast off till the last Extramity.

Wensday 8th Began where we left off the Day Before at the End of a 1080 pole Thence 180 pole a pine md 48 miles.

500 an ash md 49 miles in a valley

820 pole a white oak md 50 miles on the west Side & near a wagon Road

1140 poles a white oak md 51 miles on ye Side of a mountain

1160 po X mill Creek the first water fit for use we got since yesterday morning heare we Broak the glass of our Compass Began to Rain

1320 pole X Wapacomo alies the So Branch to two md Sycomores—hearing the Comisioners were then Encamped about 3 miles Down the River We Road Down to them where we spent the Evining

Thursday 9th Continued Cloud & likely to Rain moved with the Baggage up to the line where we Encamped opposite the Coburns

3309 Went to see Coburn who with his wife & Miller a Bucksome lass Repay'd the Visite in the Evining we Spent very merily—

Friday 10th This being the farthest Settlement we were Obleged to Lye By in order to be Supplyd with a fresh Cargo of provision that the Farrer might have time to fasten our horses shoes & the men time to wash their Shirts &c.

Saturday 11th Attended by the Gentlemen Comisioners & Bagage we Began at the two md Sycamors where we left off Thence 140 poles a Red oak md. 52 miles

460 a white oak md 53 miles

780 a white oak md 54 miles

1100 a pine md 55 miles

1420 a white oak md 56 miles

1740 a pine md 57 miles on a mountain Side

2060 a white oak md 58 miles on the East Side of the mountain

2380 a Chestnut md 59 miles at the foot of a mountain

2700 pole a Cinamon tree md 60 miles on the End of a mountain

2880 ye mountain foot left off & Encamped on Looneys Creek which Runs into the South Br. about ¼ of a mile Below where we crost the River & is about the same Distance at this place. One of our men wounded a Bair which made his escape

N. B. the Creek Runs throug a gap in those mountains we Crost this Day about ¼ of a miles to the right hand

Sunday 12th Some of our well Dis-posed hands who went a hunting this day Killd one old Bair & three Cubs. — —— Continued in Camp

Munday 13th Began where we left off on Saturday Thence 140 poles a pine md 61 miles

166 X Looneys Creek head Runs to Rt

3310 460 a Red oak md 62 miles on ye Side of a Mountain

780 poles a Chestnut oak md 63 miles on the East Side of Alleganey mountain

1100 a Chestnut md 64 miles

1160 the tope of the Alleganey mountain

1340 poles Encamped on a marshey Rocky Sort of ground exceedingly full of tall timber Chiefly maple Some few ash our horses had very good food after we had pass'd the head of Looney Creek it was with the greatest Difficulty we Could get along the mountain Being prodigously full of fallen Timber & Ivey as thick as it Could grow So interwoven that horse or man Could hardly force his way through it. So that we had very Diffcult access to the top of the Alleganey mountain where was a precipice about 16 feet high & were very hard Set to get a place where there was any probability of our asending when we had gained the Sumit there was a Level as far as we Could See to Right & left Clear of timber about a Quarter of a mile Wide Covered with Large flat Rocks & marshey tho' on the tope of the higest mountain I ever Saw

Tusday 14th one of the Pilots horses being missing a great part of the morning was Spent in vain hunting for him Began where we left off the Day Before Thence

100 poles a Loral Swamp Begins

406 poles X the River of Styx total for this Day

This River was calld Styx from the Dismel apperance of the place Being sufficen to strike terror in any human Creature ye Lorals Ivey & Spruce pine So Extremly thick in ye Swamp through which this River Runs that one Cannot have the Least prospect Except they look upwards the Water of the River of a Dark Brown-

3311 ish Couler & its motion So Slow that it can hardly be Said to move its Depth about 4 feet the Bottom muddy & Banks high, which made it Extramly Difficult for us to pass the most of the horses when they attempt'd to asend the farthest Bank tumbling with their loads Back in the River, most of our Bagage that would have Been Damaged by the Water were Brought over on men's Shoulder Such as Powder, Bread and Bedcloths &c. We got all our Bagage over as it Began to grow Dark So we were obliged to Encamp on the Bank & in Such a place where we Could not find a plain Big enough for one man to Lye on no fire Wood Except green or Roten Spruce pines no place for our horses to feed and to prevent their Eating of the Loral tyd them all up least they should be poisoned

Wensday 15th As Soon as light Loding our hungary horses Set

forward In hopes of geting Soon through Swamp & Lorals Beginning at the Bank where we left off Last night & from Thence—

314 poles a Spruce pine md 67 miles

630 poles a Birch md 68 miles at the farthest Side of the Swamp, where finding a good Spring timber'd land & good place for our horses to feed & Being late Encamped by the Same, neve was the Elysian feilds more Wellcome to a Departed Soul than this place was to us if I may be allowed the Expresion I wish it were possible for me to give a Just Description of this place that others might Judge what Reasons we who were Ingaged in this affair have to say So.

The Swamp, (which is very uncomon in places of ye kind) is prodigiously full of Rocks & Cavitys those Covered over with a very Luxuriant Kind of moss of a Considerable Depth. the fallen trees of which there was great numbers & Naturly Large were vastly Improven in Bulk with their Coats of moss The Spruce pines of
3312 which there are great Plenty their Roots Grow out on all Sids from the trunk a Considrable hight above the Surface Covered over & Joyned togither in Such a manner as makes their Roots appear like Semi Globs the Loral & Ivey as thich as they can Well grow whose Branches growing of an Extraordinary length are So well Woven together that without Cutting away it would be impossible to force through them provided they grew on a good Even Surface their Roots together with the pines are Spread over the Rocks & under the moss like a net. In what Danger must we be, in such a place all Dangerous places Being Obscured under a Clock of moss Such thickets of Loral to Strugle with whose Branches are all most as Obstinate as if composed of Iron. Our horses and often our Selves fell into Clifts & Cavitys without Seeing the danger Before we felt the Effects of it. No ones misfortune was of much Service to the others. for in Striving to Evade a Seen Dangerous or Bad place often fell into a worse. frequently we had the Roots to Cut & the Rocks to Break to free our horses of whom four or five might have been Seen Engaged at a time

Thursday 16 Lay By in order to Rest and Refresh our Selves & horses who were very much Fatigued & Cripled one of our men Killd a Deer. Arthur Dubo Bumped for Indulging a Sweet tooth Repaird our Triangular Staff which was Broken at Styx &c—

Friday 17th Decamp,d & Began at the End of the 630 Run on Wensday

320 pole a pine md 69 miles on the East of another Loral Swamp

516 pole a large Clear Branch Runs to the left Mississpa Waters

640 pole a Birch md 70 miles on the fare Side of the Swamp

830 another Swamp Begins

3313 920 a Branch. Left off Being Dark and Encampd on the Swamp Side these Swamps were allmost as Bad as ye on Styx we Began to be afraid of Involving our Selves so far in them yt we Could not get Back We went So Slow our provision Begining to fail it was Judged Necesary to Eate very Sparingly Went to Sleep

on the Strength of our Breakfast after a toilsome Day Work a general Concern appearing in every ones Countinance

Saturday 18th Mr Brook & I 'asoon as it was light Set off with our men Without Breakfast & Began where we left off Before thence

40 pole a Spruce pine md 71 miles

200 pole a Large Br. of Mississipia River to the left the Water Almost the Colur of ye River Styx Rocky & Runs Swift

228 pole fare Side Loral Swamp

280 pole a pine md 72 miles

432 po a Br. Runs to left

466 po a Loral Swamp Begins here we were obliged to Quit Being late very well prepared for Supper. It was a very Discouraging Circumstance to find all the Waters Runing to the left hand or Westward Directly Contrary to our Expectation So that Instead of Crossing the Branches of Potowmack we Crost those of Mississipia which made us Conclude we were Considerably to the West Ward of the head Spring of Potowmack

Sunday 19th Necesity is Said to have no law our provisions Continualy Decreasing without any fresh Supplys our horses perishing the Earth in the most plentifull time of year yealding no pasturage amongst those Swamps made it Absolutely Necessary for us to push forward. if hapily we might Chance on Some place where
3314 Wilde game was plenty or food for our horses According we Began where we left off the night Before Thence

71 pole through the Loral Swamp

214 pole a Spruce pine md 73 miles

314 pole another Swamp Begins

394 pole fare Side the Same

534 a Spruce pine md 74 miles

814 pole another Swamp Begins

854 pole X a Br. Runs to Right a pine marked 75 miles This Branch

Runing to our Right we thought it was in probability a Branch of Potowmack md a Burch on the West Side the Same R B. P. I. B W. T L 75 & 1746....M

884 poles through the Swamp

1014 pole another Swamp Begins

1054 poles a Large Creek Runs to the Right which we Concluded to be the Waters of Potowmack

1094 Totall for the Day & fare Side the Swamp. here we Encamp't as there was Some probability of this Being the main Branch of Potowmack thought proper to go no farther Before we had Satisfied ourSelves as to that point. We were Extremely hungary & Scarce had patience enough to forebear Snatching ye meat out of the pans Before half Done

Monday 20th Capt Winslo who was one of them that Surveyed up the River in 1736 Set off very Early in the morning with three other hands up the Creek in order to Discover whither this was the head of the River or not after we we Decamped And Removed about a mile to the Westward to get Better food for our horses. & there pitched our tents Sent Some hands to the N. W. ward to See what

they Could Discover. Some others went a hunting & Killd
3315 Dear & Turkeys w'c proved a very Seasonable Relive to us our men yt was out a hunting heard Several guns which we supposed to be Indians

Tuesday 21 those sent to ye N. W. ward came Back about 9 o the Clock & Informed us that the Branches of Alleganey were not above four or five miles ahead of us & that there was but few & very Small Branches Between us & them

About 3 in the afternoon Capt Winslo Returned who had the good fortune to find the marked trees at the head Spring mentioned in their Journal of 1736 This peice of good News was So very agreeable it Seemed to Inspire every one with New life & Vigour & was then Resolved to Run a traverse to the Spring head from where we left off on Sunday night—

Accordingly Mr Brook & I with the Chain Carriers Went to the place & from Thence West 400 poles to near our present Camp where we left off Being late. Continued this night in our old Camp—

The land or Soil on the N. W. Side the River is Black & very moist a great many Small Springs and Ouzey places & prety Stoney & hilley Exceding well timbred with Such as very Large Spruce pines great multitudes of Beach and Shugartrees Chery trees the most and finest I ever Saw Some three or four foot Diameter thirty or forty foot with out a Branch. Some few oaks Chestnuts and Locusts tho' not many &c.

Wensday 22 Decamp,d very Earley and Began where we left of the last night Thence

S 60 W 640 poles
N 60 W 127 poles
S 45 W 128 poles
S 20 E 80 poles
S 8 W 90 poles
3316 S 16 E 92 poles
S 70 E 48 poles
East 26 poles
S. 71 E 31 poles
S 83 E 27 poles

S 80 E 6 poles to the Spring head where we found the Following old marks to (viz) a Spruce pine md R B. B W. I F. B L. F F. 1736 a Beach P. G 1736 a Beech ✝ S. & a Black a Beach W. Mayo. two Beaches & two Spruce pines marked with three notches three way Each & one Large Spruce pine Blazed three ways—

We Dined on a Loyn Roasted Venison about three O'Clock at the Spring head Drank his Majestys heal-h which

Thursday 23.d Returned to the Spring where we made the Following marks (viz) a Beach mark,d G R on one Side and ✝ X on the other Side on another Beach G. Fx. W. Beverley 1746 on one of the old notched Beeches Ld. FX on another Beach Fry. Lun. Lomax. P. Hedgman 1746. a Small Spruce pine for the Corner P ✝ on the Beech markd W. Mayo. is new markd T. Lewis 1746 on another

Beech R. Brooke S. W. 1746 ✝ames Loyde on another Beach ✝ Genn 1746. On the pine old mark'd R B. is now mark,d T. B. a Small pine mark,d ✝ A. 1746. another pine mark,d ✝ohn Ra✝n. G G. a Small Beech W. O. H. ✝. L. 1746 I. H. on the Beach mark'd P. G, 1736 is markd WR 1746 P. ✝. 1746 & P H. on another Beach WB WR 1746. y3 a Stone by the Corner pine mark'd FX on a Beech markd A. C. This Done we Bid adue to the head Spring about ½ hour after nine O Clock Our Course Directing to the head of Rapahanock Being S 46 E—30 pole the tope of the mountain in the Spring heads on

60 X a Spring runs to Right

3317 138 pole a Branch Runs to ye left

320 pole a Beech md 1 mile

528 X a Branch Runs to Rt

640 poles a pine md 2 miles Began to Enter a Loral Swamp

670 fare Side the Swamp

880 Enter another Swamp

960 poles a pine md three miles

1116 pole fare Side the Swamp

1212 Enter another Loral Swamp

1280 X a Branch of Mississipia River to the Right I Supose the Same yt we Crost Saturday ye 18th Encamped on the Same

Friday 24th Began where we left off last night at the Branch

315 X a Run goes to the Rt.

320 pole a pine m,d 5 miles

640 poles a Burch md 6 miles 898 pole X to the S. E. Bank of a Br of Mississipia about 4 pole Wide which Some Supose to be monongalo the Water Clear and the Currant Slow & of a very Serpantine Course We Encamped on the N. W. Side of ye Same

This Day we had not the least Intermision of the Loral. ground hilley marshey & very Rocky Extramly Difficult to pass & no appearance as yet of the far Side

Saturday 25 Began where we left off last night Thence 62 X the River Runs to Left a Burch md 7 miles the River Bears up & Down No. & So—

380 a pine md 8 miles

676 X a Branch Runs to Left

700 a Beach md 9 miles at the fare Side of the Loral Swamp

1020 a Beach mark'd 10 miles on the top of a mountain

3318 1040 left off and Encamped on the top of the mountain was hard Set for want of Water. Colo. Jefferson very much Indisposed X

Sunday 26th Our provision now So far Spent that we had not more than Sufficient for one Day we Lays us under the Same Necessity we formerly were in of Working Mr. Brook & I as Soon as light Went to the place where we left off Last night Beginning at a Swamp Side

194 X a Br of Styx Runs to left

220 pole fare Side of ye Swamp

286 a Beech md 11 miles

520 Enter a Swamp
620 a Spruce pine md 12 miles
940 a pine md 13 miles
1060 pole fare Side of the lorals
1140 to the Brow of the alleganey mountain to which we got as it Began to grow Dark we got on the Clear flat mentioned In the Journal for monday the 13th never was any poor Creaturs in Such a Condition as we were in nor ever was a Criminal more glad By having made his Escape out of prison as we were to get Rid of those Accursed Lorals our misfortune would have Been Still greater had we not got out this night for from the Beginning or time we Entred the Swamp I did not See a plain Big Enough for a man to Lye on nor a horse to Stand. our Difficultys in this Swamp are Rather to be Conceived of than Express'd if any place can be Said to be twice as Bad as the Swamp at Styx & yet Possible for men to Strugle through This was the place our horses Sometimes tumbling in holes out Sight.

Mr. Brook was taken very Ill with a Dizeness in his head and fainting in the middle of the Swamp which we had Reason to fear would have Been his Sepulcher &c.

3319 Monday 27th This flat where on we lay we found to abound with Cranbereys Mr Winslo who had been Sick Ever Since we left the head Spring was in a Condition to Cary on the line this morning Beginning where we left of the night Before Set off our Bagage found a tolerable way Down the mountain who with the Comisioners were Resolved to make the Best of their Way to Coburns on the South Branch whilst Mr Winslo & I Carryed on the line

120 pole a Red oak mark 14 miles
440 poles a pine md 15 miles
760 poles a red oak mark'd 16 miles
1060 poles a Br. to the right at the foot of the Alleganey mountain heare we found Fumfire our Fairer who had in Coming Down the mountain Stroled away from the Company and lost himselfe whom we took along with us
1080 poles a tree markd 17 miles
1400 poles a Burch md 18 miles
1500 poles the tope of a mountain
1720 poles a Red oak markd 19 miles
1820 poles a Br. at the foot of ye mountain where we Encamped The other Company Spent the most of the Day hunting for fumfire to no purpose and at Length Concluded he was Intirely lost

Tusday 28th We Began where we left of the night Before Thence Began to assend a mountain

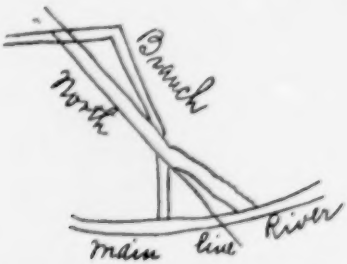
120 poles mountain top
220 po a heecory markd 20 miles
360 po mountain foot
473 po the north fork of the South Branch of Potowmack a white oak marked FX

3320 480 X Dito Sloping Downwards good Low ground Begins 540 po a white oak md 21 miles

590 po X a long pond

676 po X part of North fork into *Into* an Island

700 poles X the Main River at the forks the north Branch makes in to the main Branch in two places which the line Cuts in the following manner



the Mountains gather Close on the River Emediately Below the forks & maks precipics on Both Sides &c amonges the Rocks of which one of our men Surprized & Kill,d a Statly Buck with an axe hear Capt. Winslo left me and went Down to Coburns

860 poles a Chestnut oak md 22 miles

1180 poles a heccory md 23 miles

1500 pole a white oak md 24 miles

1820 poles a white oak md 25 miles

1900 poles to the West fork of Mill Creek here we left off having three miles down Sd Creek to Coburns & Just got there as the gentlemen Comisioners & Bagage Did who was very much Surprized to See fumfire there Before them who had Come Down the River with Capt Winslo & was Judged to be Intirely Lost. Our provision Being Entirely gone we were well prepared to Dine with Coburn on our arival. We went to our old Camping place when hear Before where we pitched or tents Several of the Inhabitants Came to See us whom our men Engaged to wrestle with them. Diverted us very much

3321 Wensday 29th Continued in Camp to procure a new Stock of provision & Recrute ourSelves and horses a Court was held for the trial of fumfire for Leaving the Company who was Condem'd to wear a Bell about his neck one week—

Thursday 30th Measured Down from where we left off on Mill Creek to the old Line in order to See that the Lines were at a proper Distance the Course N 46 E Distance 894 pole which fell on ye old line Between mill Creek & the River—

This Being his majesty Birth Day we concluded the Evining in meriment Drank his majesty health which was Followed by a Discharge of nine guns

Fryday 31th Continued in Camp preparing for our Journey the next morning

Saturday November 1th Set off went up to our line Begining where we left off Before

240 pole a pine md 26 miles

560 pole a pine md 27 miles

804 pole to the South Branch of *of* mill Creek on which we Encampd this Evening one of our men Killed a turkey Cloudy and likely to rain

Sunday November 2d having Raind last night Cloudy and Still like to rain Still and fearing we Should be Stop'd by a fresh in the South Branch of the South Branch it was Concluded to push forward to get over the Same Accordingly Begining where we left off the night Before Thence

76 pole a pine md 28 miles

396 po a hecory md 29 miles

716 poles md a walnut 30 miles near the top of a mountain

1036 poles markd a Dogood 31 miles

3322 1356 poles markd a white oak 32 miles on Arbervita mountain

Call,d from the Arbervita tree yt grow thereon at the foot of this mountain there is an Exceding Large Spring whose Stream would be Sufficient to Run a mill within a few poles of the head

1600 pole X the South fork on which we Encampd about 3 in the afternoon after a toilsom Day Work the mountans Exceeding high and Rocky Especaly yt of Arbervita

This night the Wind Blew Extramly high Distorted our tents very much Colo. Lomax had his hat Burnt

Monday November 3d It was thought proper to measure the Distance Between the two lines at this place & from this place to the End of 44 miles on the olde line the Course N 34 E Distance 749 poles This Done we Set forward with the line Begining where we left off the night Before Thence

54 poles a hiccory markd 33 miles

374 pole a heecory md 34 miles

410 po top of a very high mountain

694 pole a Chestnut md 35 miles

1014 pole a pine md 36 miles

1154 the top of a mountain on which we were obliged to Encamp Being very Late—

This mountain is Excedingly high no Such thing as Water to be found tho' we Sent on all hands to Search if hapily Some might be found we all had the good fortune to fill two of our Empty Runlets at our Camp this morning which was Brought along. which proved but a Small Dividend amongs 40 persons So much Fatigued as we were; our provision Being Extramly Salt made it all most Intolerable to bear the want of yt Eliment

3323 Tusday 4th the want of Water as Well as food for our horse made them Rambel So much that they Could not be found this morning the greater part of the Day was Spent in hunting for them They were all found at last but three of the Bagage horses who we were obleged to goe without Leaving a man to hunt

for them with orders to follow us to Dobins when he found them We then Began where left off the night Before Thence

180 pole md a Chestnut oak 37 miles

360 pole to a Branch of Shanando Runs to the Right heare we found Water & was obleged to Encamp in a narrow Valley Between two mountains—

Wensday 5th Got Ready our horses as Soon as Possible the Comisioner thought of making the Best of their throug the mountains to meet with us at the Road from Shanando to Cape Capon We took our own horses & Bagage with Some provision alongst with us & set off Begining where we left off the night Before Thence

140 marked a Chestnut oak 38 miles on the tope of a mountain

460 md a heecory 39 miles near the tope of a mountain

780 poles mark,d a white oak 40 miles by a Branch Runing to ye Right

820 X a Br. Runs to Right

1100 pole md a Chestnut oak 41 miles

1420 po md a pine 42 miles on a mountain

1740 pole md a Chestnut oak 43 miles on the side of a mountain

1940 X a large Br. of Shanando Runs to the Right

1960 po to the Cape capon Road hear we left off Being late & Encamped on the Branch we heard Several guns which we answered thinking it was our Company who was to meet us at this place.

3324 Colo Jefferson & I went above a mile up the Road in order to See if it was they but Could not See them we Chansed to meet with a hunter whom we Ingaged to Bring us Some venison who Inform'd us that it was our Company we heard Shoot &c.

Thursday 6th we Sent off one of our men to the hunter Camp to wait for the Comisioner & Inform them of our Resolution of passing the mountain. he Returned about Sun Rise with Some provision from the Comisioners Camp who had Lay'n about a mile & a half above us. on hearing they were So nigh Colo. Jefferson Road up to See them. Returning in a little time gave us to know they were Designed to goe by Wests Gap We Began where we left of the night before Thence

100 pole a white oak mark,d 44 miles

420 po a pine md. 45 miles on a mountain

500 po a Small Br. Runs to Right

660 pole the top of the Divels Back Bone alies the north mountain

740 pole a Red oak 46 miles on the South Side of the mountain

1060 pole md. a Dogwood 47 miles

1380 po md a Chestnut oak 48 miles on the Side of Black Jach hill

1700 pole a white oak md 49 miles by a Branch

2020 pole a pine md 50 miles

2340 po a Black oak md 51 miles

2580 po X the head of holmes Cr Run to the left Down to Dobin hear we left off & Road Down to Dobins where we met with Mr

Brook who had been with the Comisioners Round by Wests Gap & left them on the Roade

We pieched our Camp by Dobins feild & had the Liberty of his meadow for our horses—

Friday 7th Went to where we left off the Day Before Thence
80 poles mark'd a hicory 52 miles hear we Stopt thinking
3325 proper to measure the Distance Between the two lines the
Course N 44 E—460 poles to the old line a little to the N. W. of Dobins house Then we Returned to Camp

In the meantime the Gentlemen Comisioners & Bagage Arived who as obeserved Before had Come Round by Wests Gap hear we Encamped alltogether this night

Saturday 8th Set off Begining at the End of 80 pole Run the Day Before Thence

320 pole a Red oak markd 53 miles
640 pole a white oak md 54 miles
960 po a Black oak on the East side of timber Ridge md 55 m
1280 pole a pine markd 56 miles
1600 pole a pine md 57 miles
1788 pole X the north Branch of Shanando a pine on the N. W. side md FX the River Bears up N 80 W Down ye Contrary
1920 pole a pine md. 58 miles
2240 a heecory md 59 miles
2266 X the Indian Road
2560 a Red oak md 60 miles
2620 X Smith Creek & left off

Went down to Lockharts & Encamped heare we had left Some Rum & Wine which Contributed to our Spending the Evining very Pleasantly Rejoycing we had Surmounted So many Difficultys. This Evining we were very much Diverted By Terrable & horrer of Death. two of our hands who had Some Differance the former offring a piece of Eight to the other to feight him we the last agreed too & was So Successfull that he Beat the other & gained the peice of Eight we. he afterwards Recovered Before a justice in Orange

Sunday 9th Continued in Camp Dined with Locharts in
3326 the Evining the man who had left to hunt for the horses we
lost on the mountain Returned without finding them

Monday 10th The Gentlemen Comsrs & Bagage Capt. Winslo & Mr Brook Resolving to goe Round by Masenuten Gap over the Peeked mountain. Colo. Jefferson & I Went to the place where we left off on Saturday night & from Thence

260 poles mark a Black oak 61 miles at the foot of the peeked mountain.

580 poles a pine marked 62 miles near the first tope of the mountain

800 pole the top of the main or midle mountain

900 poles a pine mark,d 63 miles

1220 poles a pine markd 64 miles on the South East Side of the mountain

1540 poles a white oak md 65 miles
730 poles to Shenando River markd a pine on a high Bank of Rocks FX heare we left off went Down the River in order to meet the Rest of our Company. Soon after we met our horses who was Sent up for us to Bring us Down to the Comisioner Camp on the River at Loungs—where we had formerly Encamp,d going out Being about three miles Below our Line &c.

Tusday 11th Colo Jefferson Capt Winslo & I went up the River to where we left off the Day Before & from Thence
8 poles X the River
130 poles markd a pine 66 miles
450 poles mark,d a pine 67 miles
770 poles a pine markd 68 miles at the foot of the mountains heare we left off—

N B from the 10 mile tree on the old line N 48½ W 230
3327 poles to the New Line Near the End of the 66th miles. We left our Chain Carryrs Encampd at the foot of the mountains & Returned to our Camp at Lounges.

Wensday 12th the gentlemen Comisioner with the Bagage were Resolved to make use of the Best Way they Could to the head of the Conoway. Colo. Jefferson Capt Winslo Mr Brook & I with our Bagage Set to where we left off the Day Before & from Thence 320 pole a pine markd 69 miles
640 poles a Red Oak md 70 miles
960 a Chestnut oak md 71 miles
1280 poles a pine md 72 miles on the Drafts of a Creeke Call,d the hawks Bill 1600 poles a pine mark'd 73 miles on the North Branch of Naked Creek

Being parted from our Bagage by the badness of the way after having apointed to meet at one of our old Camps I carryd on the Line whilst the other went with our Bagage Expecting to be at the appointed place Before me
1920 poles a chestnut md 74 miles on the Side of a mountain
2120 poles the South Branch of Naked Creek Left—It was almost Dark Before we got to the Creek. We went to our old Camp the place apointed but our Company was not yet Come. I began to be Extramly Cold & as the Day was Dark & Rainey we were hard Set to Kendle a fire. & waited with a great Deal of Impatience for the arival of our Company But all in vain SCraped a parcel of Wet leaves to the fire & there Lay Down Both Cold & hungary. But Clearing up in the Evining the moon Shining very Bright They had Sent off two men & a Bagage horse with my Bed Clothes & Some provision which Dide not reach me till after 12 oclock

They
3328 Thursday 13th as So on as it was light Went up the Creek to the place where the old line Xt the Same S 48½ W 46 pole to the place where the New line Xd s'd Creek—In the mean time the Company had come up who had missd their way the Evining Before and Could not get to our appointed place. Then Begining where we left off the night Before Thence

120 pole a chestnut md, 75 miles
440 poles a Black oak md 76 miles on the East Side of the tope of the Blew Ridge
578 pole to the head of the Conaway (about 10 o clock having fell about 100 yards Below the place of our Begining)—

Where we made the Following marks (Viz) a Rock markd Fx five Cotton trees two popolars three Black Gums Each three notches on Every Side A Burch markd F. RY. G. FX. Nov. 13. 1746 a Birch mark,d G. Fairfax another Burch markd T. Lewis another Birch markd R. B. P. I. ✝ Genn. ✝ Loyde

We hear met the gentlemen Comisioners who had Come from Longs to this place Last Night We Went to our old Camp. Dined Drank his majesties & Ld. Fairfax healths which was accompanyd with a discharge of nine Guns to each health We then Set off Call,d in at Buckner Quarter where we got Some Sider & apples which now was Become a great Novelty & Expence Got to Franke Kirkleys that night where we Encamp'd

Friday 14th Cloudy & Raind hard which prevented the gentlemen Comisioners from Setting out. About 12 Colo. Jefferson Capt Winslo Mr Brook & I set off in order to Reach Downs at night Capt Winslo parted from us & went to his Quarter we went to Capt Downs & from Thence to Mrs. Madisons where we Spent the Evining with Mr. Nicholas & Mr. Madison &c

3329 Saturday 15th. Colo. Jefferson Set off for home as likewise Mr Brook, I Road Back to Capt Downs where the gentlemen Comisioners were Just arived after Spending Some time there Retired to our Camp At Colo. Beverleys Quarter where we Spent the Evening

Sunday 16th Taryed at Camp Colo. Hedgman after taking leave Set off homeward about 12 In the Evining the Rev'd Mr Rose & Mr. Banger Came to See the Comisrs. & Dined with us. This morning Capt. Winslo Returned home—

Monday most of the men Being Discharged we Decamp'd and Went to Capt Downs in order to Set up at Auction the horses tents &c. about 12 I took leave of the Gentlemen Comisioners & Set off homewards in Company with Mr Russel Colo. Chew. Lay at one greenhorns that Night 13 miles

Tusday 18th Set out very earley eat Breakfast at Kurs Quarter about 7 it began to Rain Continued Raining & very Cold. We got to Michael Woods about 2 and Refreshed ourselves & horses Expence 1 S 10 d Set forward to get over the mountain when we got on the tope of the Same Began to snow very hard got to Sam'l Gays at Dark where we taryed all night 40 miles

Wensday 19th Snow about 4 inches Deep Set off & got home about 12 o'the Clock &c.

Having Concluded that we Should meet at Colo. Jeffersons the first of January in order to make out what plans of the Northern Neck were wanting I left home Decbr. the 30th (the Snow very Deep) in *in* order to meet according to appointment Lay at Michael Woods Expence 1 Sh 3 D

This night the Snow was almost all melted & gon

31th got to Colo. Frys to a Boy 1 Sh 3 D

3330 January 1th Set off about 9 O clock Expence at Alligers ordinary 7 S at Thompsons 4

got Henry Martins to a boy for taking care of my horse 1 Sh 3 d

2d Set off It raining very hard got to Letchers Ordinary very wet

sh d

& much Fatigued taryed all night Expense 3: 1

3d got Colo. Jeffersons about 12 o clock the Surveyors Mr Brook & Capt Winslo not yet Come

4th Sunday

5th the Surveyors not being Come I went in Company with Colo. Jefferson & Mr Caroble Down to Warwick about 18 miles Spent the Evining with Mr Turnbull with whom we Lodged

6th Continued in Town

7th Set off Homeward about 10 o'Clock got home about 2 Surveyors not yet Come

8th 9th 10th 11th 12th 13th Continued wating for the Surveyors to no purpose To a Smith for Shoeing my horse 2 Sh to a boy 2 S 6 d

14th I then Concluded to goe to them in Essex to Know their Resolution and accordingly Set Off & got to New Castle ye night Expence at Waters ordinary 4 Sh.

15th Set of very Earley Exceedingly Cold. to fereage at Temples 6d got to Mr Brooks that night & found he was preparing for his journey in a few Days

16th went to See Colo. Beverley & returned & in the Evining went in Company with Mr Brooks to See Colo. Lomax

17th Rain'd hard Stayd with the Colo. To a boy 2: 6

18th Set off for Mr Brooks got there in the Evining Capt Winslo Coming from Church to Mr Brooks we agreed to Set off on the 21th for Colo Jeffersons

19th went to See Capt Winslo at his own house & Returned

3331 20th Continued at Mr Brooks

21th Mr Brooks & I Set of for Colo. Jeffersons about 11 O Clock got to magrahs Ordinary where we were obledged to put up our Expence 13 Sh 11 d

22d Set off Expences at Mataponye Ferry 2 Sh 6 D got to New Castle where we put up & Spent the Evining with Mr Dunkan Graham our Expence at marks ordinary & to boys 9: 3

23d Set off Expence at Robinsons ordinary 10 Sh got to Colo, Jeffersons about 3 o the Clock Capt Winslo Being there Before us

24th Began our plans of the Northern neck But as we wanted paper and Several other materials were obledged to Send to Williamsburg to mr parks for them Continued Close at work till Sunday the 8th of February on we we all Rode Down to Richmond Church where we heard the Reverend Mr Stith preach The Gentlemen of the Town Treated us to a handsome Diner &c at Mr Coules ordinary we then Returned home & the next Day Began afresh & So Continued to Saturday February ye 21th During we time Capt Winslo & I made Seven plans of the Northern neck on Ld Fairfax account according to our Instructions from Colo. Beverley By Capt Winslo.

February 22nd Capt Winslo & I took Leave of Colo Jefferson & Familey So Set of In order to get to our Respective homes as Soon as possible Capt Winslo taking the plans with him for Colo. Beverley To Servants 6 Sh 3 d

Got to Mr Henry Martins where I Lodged to a boy 7d

23rd Set off Expence at Thompsons ordinary 10d

At Alegers ordny 7 Sh got to David Lewis that night where I Lodged

24th Set off (Expence at Woods 1 Sh 3d) & So Crossing the mountains got home. Having Finished a troubsom & Difficult affar wherein First & Last I have Spent 127 days & cash L3: 3Sh

3332 To make an excelent Blew.

Take fine white Chaulk

The Juce of Elder Berry full

Ripe to which put a little

allum Water & the thing Done.

Endorsed: Supreme Court U. S. No. 1 Original, Oct. Term 1907. Maryland *v.* West Virginia, Filed Oct. 15, 1907. Office Supreme Court U. S. Filed Oct. 15, 1907. James H. McKenney, Clerk.

3333 Messrs. George Templeman and James W. McCulloh, Their Patent, "Siege of Acre," 1831¼ Acres.

THE STATE OF MARYLAND, &C.:

Know Ye that whereas George Templeman, of the City of Washington, and James W. McCulloh, of the City of Baltimore, on the twenty-fifth day of July, Eighteen hundred and thirty-eight, obtained out of the Western Shore Land Office a Special Warrant of Escheat to resurvey and affect the following Lots lying in Allegany County and contiguous to each other, viz: Nos. 1101, 1102, 1150, 1151, 1104, 1152, 1153, 1154, 1155, 1156, 1157, 1158, 1159, 1160, 1161, 1162, 1164 and 1163, with liberty of correcting errors adding any contiguous vacancy and of reducing the whole into one entire tract. In pursuance whereof it is certified that a resurvey was made on only the following Lots viz: Nos. 1101, 1102, 1150, 1104, 1153, 1154, 1155, 1156, 1157, 1159, 1161 and 1162, and a Certificate thereof returned when the same were found to contain with one thousand two hundred and thirty acres and one eighth of an acre of vacant land added the quantity of one thousand eight hundred and thirty one acres, and one fourth of an acre, and called "Siege of Acre" and they having fully compounded for the said land according to Law.

The State of Maryland doth therefore hereby grant unto them the said George Templeman and James W. McCulloh the said lots resurveyed with the vacancy added reduced into one entire tract and called "Siege of Acre" lying in Allegany County aforesaid.

Beginning for the outlines of the whole at a bounded Maple standing one mile North from a Stone fixed by Lord Fairfax for the head of the North Branch of the Potomac River, it being also the beginning tree of Lot No. 1101, and running thence with the first line of

each of Lots No. 1101 and 1102, North one hundred and
3334 seventy-nine perches, then still North four hundred and eighty-seven perches, South forty-seven degrees East one hundred and twenty-six perches, North forty-eight degrees East three hundred and twenty-three perches, North five degrees East twenty perches, South seventy-two degrees East forty-seven perches, South nine degrees West forty perches, South thirty-nine degrees East thirty-seven perches, South thirty degrees East one hundred and twenty-four perches, South seven and one half degrees East twenty-six perches, North forty degrees East fifteen perches, South thirty-seven degrees East one hundred and thirty-five perches to the end of the second line of Lot No. 1157 and reversing it and the first line thereof South thirty-seven degrees East one hundred perches, South fifty-three degrees West eighty perches to the beginning of said Lot, then running with the second line, the third line and with the given line of Lot No. 1159, South thirty-seven degrees East one hundred perches, South fifty-three degrees West eighty perches, North thirty-seven degrees West one hundred perches to the beginning of said Lot, then reversing the first line of Lot No. 1155, South fifty-three degrees West eighty perches to the beginning of said Lot, then running with the second line of Lot No. 1161, South thirty-seven degrees East one hundred perches, then running with the third line of each of Lots No. 1161, and 1162, South fifty-three degrees West one hundred and sixty perches, then with the given line of Lot No. 1162, and reversing the given line of Lot No. 1153, North thirty-seven degrees West two hundred perches, the- with the third line of Lot No. 1152 and reversing the third line of Lot No. 1104, South fifty-three degrees West eighty perches, then reversing the second and first lines of Lot No. 1104, South thirty-seven degrees East one hundred perches, South fifty-three degrees West eighty perches to the beginning of Lot No. 1104, then reversing the first line of Lot No. 1150, West eighty perches to the beginning of Lot No. 1150,
3335 then running with the third line of Lot No. 1101, South eighty-nine and one half perches, then by a straight line to the beginning.

Containing One thousand eight hundred and thirty-one acres and one fourth of an acre, according to the Certificate of Resurvey thereof, taken and returned into the Western Shore Land Office bearing date the twenty-seventh day of August, Eighteen Hundred and thirty-eight, and there remaining together with all rights, profits, benefits and privileges thereunto belonging. To Have and To Hold the same unto them the said George Templeman and James W. McCulloh their heirs and assigns forever.

Given under the Great Seal of the State of Maryland this fourth day of December, Eighteen hundred and thirty-nine.

Witness the Honorable Theodorick Bland, Esquire, Chancellor.

[THE GREAT SEAL.]

WM. GRASON. THEODORICK BLAND, *Ch.*

LAND OFFICE OF MARYLAND, *sct:*

I hereby Certify, that the aforegoing is a true Copy of the Patent "Seige of Acre" 1831¼ acres, patented to George Templeman and James W. McCulloh 4th December, 1839, as recorded in Liber G. G. B. No. 3 folio 467 &c., one of the Record Books on file in this office.

In Testimony whereof, I have hereunto set my hand
[SEAL.] and affixed the Seal of the Land Office of Maryland, this second day of August, nineteen hundred and seven.

(Signed) E. STANLEY TOADVIN,
Commissioner of the Land Office.

Endorsed: Copy. George Templeman and James W. McCulloh, their Patent, "Siege of Acre" 1831¼ acres. Supreme Court U. S. No. 1 Original, Oct. Term 1907. Maryland *v.* West Virginia. Filed Oct. 15, 1907. Office Supreme Court U. S. Filed Oct. 15, 1907. James H. McKenney, clerk.

3336 Messrs. James W. McCulloh and George Templeman, Their Patent, "Troas," 3131¾ Acres.

THE STATE OF MARYLAND, &C.:

Know Ye that whereas John I. Abert, James W. McCulloh and George Templeman of Allegany County on the fifteenth day of May, Eighteen hundred and thirty-eight, obtained out of the Western Shore Land Office a Special Warrant to ReSurvey a tract or parcel of land called "Bank Property" lying in the County aforesaid originally on the twenty-ninth day of May, Eighteen hundred and thirty-seven, granted the President, Directors and Company of the Bank of the United States for one thousand six hundred and twenty-two and one half acres, with liberty of correcting errors and adding any contiguous vacancy. And whereas the said John I. Abert assigned all his right, title and interest in the aforesaid Warrant to the said James W. McCulloh and George Templeman. In Pursuance whereof a resurvey was made and a Certificate thereof returned when the same was found to contain with one thousand four hundred and eighty-one acres and three eighths of an acre of vacant land added the quantity of three thousand one hundred and thirty-one acres and three fourths of an acre and called "Troas" and they having fully compounded for said vacancy according to law.

The State of Maryland doth therefore hereby grant and confirm unto them the said James W. McCulloh and George Templeman the said land resurveyed as aforesaid with the vacancy added and called "Troas" lying in Allegany County aforesaid.

Beginning for the outlines of the whole at the beginning of "Bank Property" the original it being also at the end of the forty-ninth line of the first part of the tract called "Western Connexion" and running thence with the lines of "Bank Property" the original North forty-seven and one half degrees East two hundred and sixty-two perches, North forty-seven and one half degrees East one hundred and two perches, North sixty degrees East twenty perches, North forty-two perches, North thirty-eight degrees East one hundred and sixty

perches, North ten degrees West sixty perches, North nine-
3337 teen degrees East twenty-six perches, North thirty degrees West eighty-six perches, North sixty-seven degrees East eighty-five perches, then with the tenth line of the original as corrected to its call North forty and one fourth degrees West two hundred and seventy-nine perches, then with the eleventh line of the original South forty-three degrees West six hundred and eighty perches, then North forty perches, North seventy-two degrees West one hundred and ninety perches, South seven hundred and thirty-two perches, South forty-seven degrees East one hundred and five perches, North forty-eight degrees East three hundred and twenty-three perches, North five degrees East twenty perches, South seventy-two degrees East forty-seven perches, South nine degrees west forty perches, South thirty-nine degrees East thirty-seven perches South thirty degrees East one hundred and twenty-four perches, South eleven and one half degrees East twenty-six perches, North forty degrees East fifteen perches, South thirty-seven degrees East one hundred and thirty-five perches then by a straight line to the beginning.

Containing Three thousand one hundred and thirty-one acres and three fourths of an acre, according to the Certificate of Resurvey thereof, taken and returned into the Western Shore Land Office bearing date the twenty-second day of January, Eighteen hundred and thirty-nine, and there remaining; Together with all rights, profits, benefits and privileges thereunto belonging. To Have and To Hold the same unto them the said James W. McCulloh and George Templeman their heirs and assigns forever.

Given under the Great Seal of the State of Maryland this twentieth day of December, Eighteen hundred and thirty-nine.

Witness the Honorable Theodorick Bland, Esquire, Chancellor.

[THE GREAT SEAL.]

WM. GRASON. THEODORICK BLAND, *Chan.*

3338 LAND OFFICE OF MARYLAND, *set:*

I hereby Certify, that the aforegoing is a true copy of the Patent of "Troas" 3131¾ acres, patented to James W. McCulloh and George Templeman 20th December, 1839, as recorded in Liber G. G. B. No. 3 folio 475 &c., one of the Record Books on file in this office.

In Testimony Whereof, I have hereunto set my hand
[SEAL.] and affixed the Seal of the Land Office of Maryland, this second day of August nineteen hundred and seven.

(Signed) E. STANLEY TOADVIN,
Commissioner of the Land Office.

Endorsed: Copy. James W. McCulloh and George Templeman, their Patent "Troas" 3131¾ acres. Supreme Court U. S. No. 1 Original, Oct. Term, 1907. Maryland *v.* West Virginia. Filed Oct. 15, 1907. Office Supreme Court U. S. Filed Oct. 15, 1907. James H. McKenney, Clerk.

3339 Deed Book 57, Page 123.

Sarah Friend *et al.*
to
John H. Friend.

Deed.

This Deed, Made this 9th day of February, in the year eighteen hundred and eighty-four, by Sarah Friend Sen., Marshall Friend and Barbary Ellen Friend, his wife, of Preston County, and State of West Virginia, and Ira E. Friend and Clara B. Friend, his wife, Wm. H. H. Friend and Jane F. Friend, his wife, and Martha J. Forkner, of Garrett County and State of Maryland.

Witnesseth: That in consideration of the sum of Five Hundred and Fifty Dollars paid in hand, the said parties of the first part doth bargain, sell, grant and convey unto John H. Friend of Garrett County, and State of Maryland all their right, title, dower and interest in the following described piece or parcel of land, lying and being in the County of Preston, and State of West Virginia, and bounded as follows:

Beginning at a stone and pointers, a corner of the original survey; thence East 130 perches Chestnut, corner of the original survey; thence East 14 perches to stone in a line of the original, and with the same South 158 poles stone and Gum on the North band of Buffalo Creek; thence N. 85 degrees W. 90 perches, stone, corner to John and George Evans, N. 6 degrees E. 36 perches to stone, N. 44 degrees W. 88 perches to stone, (now Chestnut) N. 6 degrees E. 57 perches to the beginning, containing one hundred and twenty-two acres. And the said Grantors covenant that they have a good right to convey their right in said tract, of land to the said Grantee.

Witness the following signatures and seals.

her SARAH x FRIEND SEN. mark.	[SEAL.]
MARSHALL FRIEND.	[SEAL.]
BARBARA ELLEN FRIEND.	[SEAL.]
IRA E. FRIEND.	[SEAL.]
CLARY B. FRIEND.	[SEAL.]
W. H. H. FRIEND.	[SEAL.]
JANE F. FRIEND.	[SEAL.]
MARTHA J. FORKNER.	[SEAL.]

Teste:
MELVEY G. FRIEND.

3340 STATE OF MARYLAND,
County of Garrett, ss:

I, L. C. Fike, a Justice of the Peace of the County aforesaid, do certify that Barbary Ellen Friend, Clara B. Friend and Jane F. Friend, the wifes of Marshall Friend, Ira E. Friend and Wm. H. H.

Friend, whose names are signed to the above deed, bearing date on the 9th day of February, 1884, personally appeared before me, in the County aforesaid, being examined before me privily and apart from their said husbands, and having the said writing fully explained to them, the said Barbary Ellen Friend, Clara B. Friend and Jane F. Friend acknowledged the said writing to be their acts, and declared they had willingly executed the same, and do not wish to retract it.

Given under my hand this 9th day of February, 1884.

LEVI C. FIKE, *J. P.* [SEAL.]

STATE OF MARYLAND,
County of Garrett, ss:

I, L. C. Fike, a Justice of the Peace of the County aforesaid, do certify that Marshall Friend, Ira C. Friend, Wm. H. H. Friend, Sarah Friend, Sen., and Martha J. Falkner, whose names are signed to the above deed, bearing date on the — day of February, 1884, have this day acknowledged the same before me in my county.

Given under my hand this the 9th day of February, 1884.

L. C. FIKE, *J. P.* [SEAL.]

STATE OF MARYLAND,
Garrett County, ss:

I, W. H. Tower, Clerk of the Circuit Court for Garrett County, do hereby certify that Levi C. Fike, Esquire, before whom the aforegoing acknowledgments were made, and who has thereto subscribed his name, was at the time of so doing a Justice of the Peace in and for the County and State aforesaid, duly appointed, commissioned and qualified, and authorized by law to administer oaths and take acknowledgments.

In testimony whereof I hereto set my hand and affix the seal of the said Circuit Court for said Garrett County, this 14th day
3341 of February, 1884.

[Circuit Court, Garrett County.]

W. H. TOWER, *Clerk.*

WEST VIRGINIA, *ss:*

On the 5th day of December, 1885, the foregoing writing with certificate thereto was produced to me in my office, and therein admitted to record.

Teste:

J. AMI MARTIN,
Clerk County Court, Preston Co.

A Copy from the Record.
Attest:
(Signed) GEO. A. WALLS, *Clerk.*

Endorsed: Sarah Friend *et al.* To John H. Friend. Deed. Supreme Court, U. S. No. 1 Original, Oct. Term, 1907. Maryland *v.* West Virginia. Filed Oct. 15, 1907. Office, Supreme Court U. S. Filed Oct. 15, 1907. James H. McKenney, Clerk. Copy $1.00.

3342 At the request of Melville G. Friend this deed was recorded M'ch 22" 1893 at 1.45 o'clock p. m.

This Deed, made this Tenth day of February, in the year eighteen hundred and ninety three, by and between John H. Friend, and Sevilla Friend his wife, of Garrett County, in the State of Maryland, of the first part, and Melville G. Friend of the County and State aforesaid, of the second part, Witnesseth:

That for and in consideration of the sum of Five hundred dollars, current money, to them in hand paid, by the said party of the second part, the receipt whereof is hereby acknowledged, the said party of the first has given, granted, bargained and sold, and by these presents do- give, grant, bargain and sell unto the said party of the second part and to his heirs and assigns, forever,

All that piece or parcel of land lying and being in Garrett County and State of Maryland, and which is described as follows, to wit: Consisting partly of a tract of land patented by the State of Maryland to John and George Evans, and partly of an original survey, and Beginning for the same at a stone and painters, a corner of the original survey, and running thence East one hundred and thirty perches to Chestnut corner, thence East, fourteen perches to a stone in a line of the original, and with the same, South one hundred and fifty eight perches to a stone and Gum tree on the North Bank of Buffalo Creek, thence North eighty five degrees West, ninety perches to stone, corner to John and George Evans, thence North six degrees East, thirty six perches to stone, North forty four degrees West, eighty perches to stone now chestnut, thence North six degrees East, fifty seven perches to the beginning, containing one hundred and twenty two acres.

And the said party of the first part hereby covenants to warrant specially the said piece or parcel of land hereby bargained and sold.

Witness our hands and seals this 23rd day of February, in
3343 the year eighteen hundred and ninety three.

JOHN H. FRIEND. [SEAL.]

her
SEVILLA x FRIEND. [SEAL.]
mark.

Test:
WM. H. H. FRIEND.

STATE OF MARYLAND,
Garrett County, To wit:

I hereby certify that on this 23rd day of February, in the year eighteen hundred and ninety three, before me, the subscriber, a Justice of the Peace of the State of Maryland, in and for Garrett County, personally appeared John H. Friend and Sevilla Friend, his wife, and did each acknowledge the aforegoing deed to be their respective act.

WM. FREDERICK, *J. P.*

STATE OF MARYLAND,
Garrett County, To wit:

I, Edward Z. Tower, Clerk of the Circuit Court for Garrett County, in the State of Maryland, hereby certify that the aforegoing is a true copy taken from Liber E. Z. T., No. 20, folios 443 &c., one of the Land Records of Garrett County, Maryland.

In testimony whereof, I hereunto subscribe my name
[SEAL.] and affix the seal of the said Circuit Court, at Oakland, this 9th day of September, A. D., 1907.

E. Z. TOWER, *Clerk.*

Endorsed: Certified Copy of Deed from John H. Friend and wife to Melville G. Friend. Supreme Court U. S. No. 1 Original, Oct. Term, 1907. Maryland *v.* West Virginia. Filed Oct. 15, 1907. Office Supreme Court U. S. Filed Oct. 15, 1907. James H. McKenney, Clerk.

3344 Deed Book 106, Page 24.

Mary C. Loar
to
Preston Lumber & Coal Co.

Deed.

This Deed, Made this 27th day of November, in the year one thousand nine hundred and three, by and between Mary C. Loar of Oakland, Garrett County, in the State of Maryland, party of the first part, and the Preston Lumber and Coal Company, a corporation chartered and doing business under the laws of the State of West Virginia, party of the second part.

Witnesseth: That for and in consideration of the sum of Two Thousand Five Hundred Dollars ($2500.00) lawful money of the United States of America, well and truly paid by the said party of the second part to the said party of the first part, the receipt whereof is hereby acknowledged, the said party of the first part has granted, bargained and sold, and by these presents does grant, bargain, sell and convey unto the said party of the second part, and its assigns. All that certain piece, parcel or lot of land situate and being in Preston County, West Virginia, in Union District, of said County, on the waters of Wolfe Run, a tributary to Horse Shoe Run, bounded and described as follows, to-wit:

Beginning at a stone planted on the summit of Backbone Mountain, with cherry, beech and chestnut pointers recently fixed by Davis & Arveyors as the Northern corner of the Bell Lands; thence N. 56 degrees W. (V. 4 degrees) 39 poles to pointers in line of F. W. and W. F. Deakins and Tabitha Cassin's 6457 acres tract and N. 14 degrees E. (V. 3 degrees 16') 39.5 poles from two chestnuts, cucumber and birch standing on top of Backbone Mountain, now planted stone marked cucumber, with stone pile and four chestnut and one

cucumber pointers recently marked; thence with said Deakins and Cassins' lines, N. 14 degrees E. (V. 3 degrees 16′) 279.3 poles to "a stone, 3 chestnuts, 2 sugars, one red and a cherry pointers," now stone with cherry, sugar chestnut and red oak pointers, corner Deakins-Cassin, and now of Jacob Slaubaugh; thence with Slaubaugh N. 31½ degrees E. (v. 2 degrees 55′) 152 poles to a
3345 stone marked D., standing at the end of 114 poles in the 16th line of Deakins 2000 acre survey, an original corner of the Deakins-Cassin 6457 acre lot, and now a corner of Jacob Slaubaugh and John Parke; thence with said Parke N. 31½ Degrees E. (V. 3 degrees 35′) 260.6 poles to stone pile, at the end of the 14th line of the Deakins 2000 acre tract, near Tomahawk Spring, and now the corner of said Parke and "Stalnaker," now Preston Lumber & Coal Co. The two last above mentioned lines are recited in the Patent as "N. 31½ degrees E. 414 poles to corner F. W. Deakins Survey of 2000 acres." East (V. 3 degrees 03′) 113 poles to a large Chestnut Oak snag in the Maryland-West Virginia Boundary Line, and corner said P. L. & C. Co., and with said State Line, South (V. 4 degrees) 187 poles to a point on top of the Backbone Mountain; thence S. 41 degrees 42′ W. 584.21 poles to the beginning, containing 625.007 acres, more or less.

The said party of the first part hereby reserves all the mineral with the privileges of a full and uninterrupted right of way into and under the said land at such points and in such manner as may be necessary and proper for the purpose of digging, mining and transporting said mineral and the privileges and easements necessary for the convenient draining, ventilating depositing waste and operating the mines, without any liability for damages that may arise from the removal of all said mineral.

Together with the buildings and improvements thereon and the rights, roads, ways, waters, privileges and appurtenances thereunto belonging or in any wise appertaining. To have and to hold the above granted property, with all and singular the appurtenances thereto belonging, unto the said Preston Lumber & Coal Company and its assigns forever in fee simple. And the said party of the first part covenants and she will warrant generally the property hereby conveyed, and that she will execute such other and further assurances *or* said land as may be requisite.

Witness my hand and seal the day and year first above written.

MARY C. LOAR. [SEAL.]

Witness:
A. S. TEETS.

3346 STATE OF MARYLAND,
Garrett County, To-wit:

I hereby certify that on this 27th day of November, in the year one thousand nine hundred and three before me, the subscriber, a Justice of the Peace of the State of Maryland, in and for Garrett County, personally appeared Mary C. Loar and acknowledged the aforegoing deed to be her act.

In Testimony whereof, I hereunto set my hand this 27th day of November A. D., 1903.

A. S. TEATS, *J. P.*

STATE OF WEST VIRGINIA,
County of Preston, To-wit:

I, Geo. A. Walls, Clerk of the County Court of said County, do hereby certify that the foregoing writing was this day produced to me in my said office, and together with the certificate thereunto annexed, was duly admitted to record therein.

Given under my hand this 30th day of November, 1903.

GEO. A. WALLS, *Clerk.*

A Copy from the Record.
Attest:
(Signed) GEO. A. WALLS, *Clerk.*

Endorsed: Mary C. Loar to Preston L. & C. Co. Deed. Supreme Court U. S. No. 1 Original, Oct. Term, 1907. Maryland *v.* West Virginia. Filed Oct. 15, 1907. Office, Supreme Court, U. S. Filed Oct. 15, 1907. James H. McKenney, Clerk. Copy &c. $100.

3347 Deed Book 71, Page 31.

Mary E. Kunkle *et al.*
to
Albert Lewis *et al.*

Deed.

This Deed, Made this 30th day of July in the year 1891, between Mary Elizabeth Kunkel, and Sidney D. T. Smith and Mary E. Smith, his wife, in right of said wife, all of Frederick County, in the State of Maryland, the Grantors, and Albert Lewis, Rollin P. Crellin, Lucius B. Crellin and Richard Sharpe, Jr. of Luzerne County, Benjamin F. White, of Lackawanna, and Edward B. Leisewing of Carbon County, and all of the State of Pennsylvania, Grantees.

Witnesseth: That in consideration of the sum of Forty-one Thousand Four Hundred and Fifty-Four Dollars to the said Grantors paid, the receipt thereof they hereby acknowledge, the said Grantors do hereby grant unto the said Grantees, their heirs and assigns, all of that certain body of lands situate in Union District, in the County of Preston, in the State of West Virginia, on the waters of Laurel Run, the South fork of Snowy Creek, Rhine Fork of the Youghiogheny River, and all lying West of said River, and South of the Baltimore and Ohio Railroad, and adjoining the boundary line between the States of Maryland and West Virginia, and more particularly described as follows, to-wit:

Beginning at a corner on Foley's Knob; thence South thirty-one degrees East twenty perches; thence South eighty-eight degrees thirty minutes, East forty perches; thence North seventy-seven de-

grees East two hundred and one perches; thence South thirty-one degrees East forty-seven perches; thence North seventy-four and five tenth perches; thence East one hundred and thirty-one perches; thence North one degree fifteen minutes East ninety-six perches; thence North nineteen degrees thirty minutes East eighty-two and twenty-five one-hundredths perches; thence North thirty-nine degrees East one hundred and sixty perches; thence North eighty-five degrees fifteen minutes, East fifty-four perches; thence North fifty-two degrees fifteen minutes, East one hundred and ten
3348 perches; thence South fifty-nine degrees thirty minutes, East fourteen perches to said State line; thence along said State Line North two degrees ten minutes East two hundred and nine and five tenth perches; thence South eighty-nine degrees and forty-five minutes West ten perches; thence South eighty-nine degrees and thirty minutes West one hundred and twenty-five perches; thence South eighty-four degrees West five and five-tenth perches; thence North nineteen degrees West ninety-eight perches; thence North twenty-six degrees East sixty perches; thence North two degrees East one hundred and one perches to a Pine Tree, being the end of the forty-first line of the three thousand acre survey; thence South twenty-eight degrees, forty-five minutes West forty-nine perches; thence North fifty-two degrees thirty minutes West eighty-nine perches; thence North thirty-eight degrees fifteen minutes West one hundred and seven and two-tenth perches; thence South eighty-one degrees forty-five minutes West fifty-nine perches; thence North thirty-three degrees thirty minutes West sixty-three perches; thence North sixty-nine degrees West two hundred and eleven perches; thence North thirty-nine degrees West one hundred and thirteen perches; thence South eighty degrees West twenty perches; thence North forty degrees West seventy-two perches to a stump of Cucumber Tree; thence South twenty-two degrees West three hundred and twelve perches to line in the Hooke Knob Tract; thence by same South fifty-three degrees thirty minutes West ten perches; thence South thirty-five degrees East six perches; thence South twenty-one degrees forty-five minutes, West two hundred and twenty-seven perches; thence North eighty-nine degrees thirty minutes West sixteen and four*th*-tenth perches; thence North eighty-eight degrees thirty minutes West one hundred and sixty-two perches thence North nineteen degrees fifteen minutes West one hundred and twenty-one and five-tenth perches; thence South eleven degrees fifteen minutes East one hundred and fifty-eight and eight-tenth perches; thence South fifty-seven degrees West two hundred and one perches; thence South nine degrees thirty minutes West one hundred and sixty-nine perches; thence South thirty degrees thirty minutes East one hundred and thirty-three and two-tenth perches; thence South fifteen de-
3349 grees West twenty-five and five-tenth perches thence South sixty degrees East one hundred and eighty-five perches to the corner on the side of Mt. Carmel; thence North forty-six degrees thirty minutes East sixty-nine and five-tenth perches; thence South forty-five degrees thirty minutes East one hundred and sixty perches; thence North forty degrees E. one hundred and eighteen perches;

thence South thirty-seven degrees East seventy-six and five-tenth perches; thence South seventy degrees E. fifty-six and five-tenth perches; thence South four degrees thirty minutes East thirty-six perches; thence North eighty-six degrees East twelve perches; thence South thirty-two degrees thirty minutes East one hundred and four perches to place of beginning containing fifty-six hundred and thirty-two acres and seventy-two perches of land, more or less, the great portion of which being the same conveyed by John J. Kunkel in his lifetime to the said Mary Elizabeth Kunkel, his wife, by deed dated October twenty-sixth, in the year eighteen hundred and seventy-five, and recorded in Preston County in Deed Book Number forty-one, page four hundred and ninety-one, the interest of Mary E. Smith therein being derived from her father, John H. Bruner, Grantee of Thos. H. O'Neal and wife for five hundred and ten acres, by deed dated 29th of May in the year 1860, and the 12th of September, 1861, and recorded in said Preston County in Deed Book No. 31, pages number 325 and 327. The lands above described are covered by Patents from State of Virginia to Benjamin Stoddard for one thousand acres dated September 10th, 1787, and also patents from said State to Francis and William Deakins for two thousand and five hundred acres, dated May 6th, 1796, and also patent from said State to said Francis and William Deakins for nineteen hundred acres, dated June 20th, 1794, and also Patent from said State to John Hoye for five hundred acres, dated March 30th, 1843, and also patent from said State to said John Hoye for three thousand acres, dated December 31st, 1844, and it is understood to include the same land mentioned in the patent for two thousand and five hundred acres above recited. To have and to hold said body of
3350 land to said Grantee, their heirs and assigns in the following proportion, to-wit: Unto the said Albert Lewis, the undivided nine-sixtieths; unto said Rollin P. Crellin, fifteen-sixtieths; unto said Benjamin F. White, ten-sixtieths; unto the said Lucius B. Crellin, five-sixtieths; unto the said Richard Sharpe, Jr., twelve-sixtieths; and unto the said Edward B. Leisewring the remaining nine-sixtieths.

And the Grantors covenant that they have the right to convey as aforesaid, the said body of land to the said Grantees, and that the same is free from incumbrances. And the said Sidney D. T. Smith and Mary E. Smith, his wife, join in this grant with General Warranty, as to the undivided five hundred and ten acres of said lands, and the said Mary E. Kunkel grants with general Warranty, as to the remainder of said lands, except the 259 acres and 48 perches embraced in the survey of Hookers Knob, and excepting also from said Warranty by said Mary E. Kunkel, the following parts of said lands, to-wit: 30 acres and 40 perches claimed by J. K. Stemple; also 15 acres claimed by King; also 50 acres known as Wotring's old clearing; also 100 acres claimed by Charles H. Greenleaf; also 3 acres and 100 perches claimed by Isaac Shaffer; also 19 acres claimed by Washington Fike; also 30 acres known as the Wiles old field; also 2 acres near "Arnolds" house; also 1 acre, Thomas Ashby's infringement; also 22 acres and 40 perches claimed by Jonathan

White; also 5 acres adjoining White; also Cranes' infringement, 1 acre and 40 perches; also Vanvert's infringement 2 acres, and 40 perches; also 2 acres and 80 perches in addition to Vanvert's Infringement; also 90 perches claimed by Noah Dike at the Cucumber Tree corner; also 45 acres and 32 perches claimed by the same Noah Dike and Chambers also Kolb's Infringement 1 acre; also School House Lot; also the J. Starchman Lot and the Marion Hoye Lot; together containing 322 acres claimed to be included in above description, but title to which it is not intended to be warranted to present Grantees.

In witness whereof said Grantors have hereunto set their
3351 several signatures and seals, this day and year first aforesaid.

MARY E. KUNKEL. [SEAL.]
MARY E. SMITH. [SEAL.]
SIDNEY D. T. SMITH. [SEAL.]

Signed, sealed and delivered in the presence of:
MARCHALL FONT.

The words "thousand" and "hundred" on 2nd page erased and "degrees" and "minutes" interlined before signing in two places.

MARSHALL FONT.

STATE OF MARYLAND,
County of Frederick, To-wit:

I, Marshall Font, a Notary Public of the County aforesaid, do certify that Mary Elizabeth Kunkel and Sidney D. T. Smith, whose names are signed to the above deed, bearing date on the 30th day of July, 1891, acknowledged said deed before me to be their respective act.

Witness my hand and Notarial Seal affixed this 30th day of July, 1891.

[Marshall Font, Notarial Seal.]

MARSHALL FONT,
Notary Public.

STATE OF MARYLAND,
County of Frederick, To-wit:

I, Marshall Font, a Notary Public of the County aforesaid, do certify that Mary E. Smith, the wife of said Sidney T. D. Smith, whose names is signed to the above deed, bearing date on the 30th day of July, 1891, personally appeared before me in the County aforesaid, and being examined by me privily and apart from her said husband, and having the said writing fully explained to her by me, the said Mary E. Smith acknowledged the said writing to be her act, and declared that she had willingly executed the same, and does not wish to retract it.

Given under my hand this 30th day of July, 1891, and Notarial Seal affixed.

[Notarial Seal, Marshall Font.]

MARSHALL FONT,
Notary Public.

3352 STATE OF WEST VIRGINIA,
County of Preston, To-wit:

On the 29th day of September, 1891, the foregoing writing with certificate thereto was produced to me in my office and therein admitted to record.

Teste:

J. AMI MARTIN,
Clerk County Court, Preston Co.

A Copy from the Record.
Attest:
(Signed) GEO. A. WALLS, *Clerk.*

Endorsed: Mary E. Kunkel *et al.*, to Albert Lewis *et al.* Deed. Supreme Court, U. S. No. 1, Original, October Term, 1907. Maryland *vs.* West Virginia. Filed Oct. 15, 1907. Office Supreme Court, U. S. Filed Oct. 15, 1907. James H. McKenney, Clerk. Copy $2.35.

3353 Wyndham Robertson, Esquire, Governor of the Commonwealth of Virginia, to all — whom these presents shall come, Greeting:

Know ye, that in conformity with a survey made on the 10th day of September one thousand eight hundred and thirty-three, by virtue of Land Office Treasury Warrant No. 10,011 there is granted by the said Commonwealth unto Dan Griffith, a certain tract or parcel of land containing thirty-one acres, situate in Preston County on a ridge between the waters of Little Sandy Creek and Buffalo Creek, north of the road leading from Jesse Spurgeon's to Silverport, adjoining the Maryland line where said road crosses and bounded as follows: Beginning at a black oak supposed to be in or near the Maryland line, near the Silverport road and running thence N. 11 E. 20 poles to a birch, thence N. 65 poles to two white oaks, thence S. 74 W. 86 poles to a white oak, thence S. 30 E. 76 poles to a locust, thence N. 83 E. 40 poles to the beginning, with its appurtenances.

To have and to hold the said Tract or Parcel of Land, with its appurtenances, to the said Dan Griffith and his heirs forever.

In witness whereof, The said Wyndham Robertson, Esquire, Governor of the Commonwealth of Virginia, hath hereunto set his hand, and caused the Lesser Seal of the Said Commonwealth to be affixed at Richmond, on the 31st day of August, in the year of our Lord one thousand eight hundred and 36 and of the Commonwealth the 61st.

[SEAL.] WYNDHAM ROBERTSON.

3354–3403 STATE OF WEST VIRGINIA,
Auditor's Office, City of Charleston, To wit:

I, A. C. Scherr, Auditor of the State of West Virginia, do hereby certify that the foregoing is a true copy of a paper purporting to be a grant from the State of Virginia to Dan Grifhth dated the 31st day of August, 1836, on file in said Auditor's office among the certified copies of records received from the office of the Register of the Land office at Richmond, Virginia, and deposited in the said Auditor's Office, under Acts of the Legislature of West Virginia, passed February 24th, 1893, and February 20th, 1897.

Given under my hand and official seal, at Charleston, W. Va., this 30th day of July, 1906.

[SEAL.] A. C. SCHERR, *Auditor.*

Endorsed: Comm. of Virginia to Dan Griffith. Patent. Supreme Court U. S., No. 1 Original, Oct. Term, 1907. Maryland *v.* West Virginia. Filed Oct. 15, 1907. Office Supreme Court, U. S. Filed Oct. 15, 1907. James H. McKenney, Clerk.

3404 1 Hening's Statutes at Large, pages 230 to 236.

Laws of Virginia.

Of the proceedings of the Grand Assembly of Virginia in the year 1642, we have no remains, except two papers, the one entitled "The Declaration against "the Company to be entered as the twenty-first act;" the other, "A Remonstrance of the Grand Assembly." The first is signed by the Governor, members of the Council and House of Burgesses, and dated at James City, the first day of April, 1642, in the 18th year of the reign of Charles, &c., immediately after which the Assembly adjourned to meet on the second day of June in the same year:—The other is dated the first day of July, 1642. These papers are preserved both in the Ancient Records of the London Company, and in a manuscript volume belonging to Thomas Jefferson, Esq. (President of the United States,) which was purchased by him from the executor of Richard Bland, Esq.—From this last mentioned volume the following are extracted. See, for the first, page 106; and for the second, page 103.

The Declaration Against the Company to be Entered as the Twenty-first Act.

To all christian people to whom these presents shall come to be read, heard or understood, We the Governor, Council and Burgesses of the Grand Assembly in Virginia send greeting in our Lord God Everlasting:

Whereas George Sandis, Esq. being appointed agent for the colony by an Assembly 1639 hath exhibited a petition in the name of the adventurers and planters in Virginia to the Honourable House of Commons in Parliament in England for the restoring of the letters

patents of incorporation to the late Treasurer and Company—mistaking his advice and instructions from the said Assembly; for his so doing it being neither the meaning nor intent of the said As-
3405 sembly or inhabitants here for to give way for the introducing of the said company or any other.

To which intent and purpose this Grand Assembly having fully debated and maturely considered the reasons on both sides as well arguing for as against a company and looking back into the condition of the times under the company as also upon the present state of the colony under his majesties government they find the late company in their government intollerable the present comparatively happy and that the old corporation cannot with any possibility be again introduced without absolute ruin and dissolution to the colony for these reasons following, vizt.

1st. The intollerable calamity of the colony we find proved by many illegal proceedings and barbarous torments inflicted upon divers of his majesties subjects in the time of the said companies government all which appear per depositions taken at a Grand Assembly anno 1632 and is known to divers now living in the colony.

Also we find the whole trade of the colony to the general grievance and complaint of the inhabitants then and now appearing to us monopolized by the said company insomuch that upon the going home of any person for his country it was not free to him to carry with him the fruits of his labour for his own comfort and relief but was forced to bring it to the magazine of the company and there to exchange it for useless and unprofitable wares.

2dly. The present happiness is exemplified to us by the freedom of yearly assemblies warranted unto us by his majesties gracious instructions and the legal trial per juries in all criminal and civil causes where it shall be demanded. And above all by his majesties royal incouragement unto us upon all occasions to address ourselves unto him by our humble petitions which doth so much distinguish our happiness from that of the former times that private
3406 letters to friends were rarely admit-ed passage.

To the third for introducing the old corporation without ruin and dissolution to the colony at present as a thing not possible we conceive we have these just grounds.

1st. There can be no right or property introduced for them without proving the illegality of the King's proceeding so that all grants since upon such a foundation must of consequence be and tending to displeasure, we the present planters enjoy our lands by immediate grant from his majesty if (as it is argued in their petition) the King had no power to grant our possessions must give place to their claim which is one invincible argument (as we conceive) of the ruin and dissolution to the colony at present; when if their pretences take place we must be outed of all. And whereas it is alleged that the charter of orders from the Treasurer and Company anno 1618, gives us claim and right, to be members of the corporation quatenus planters we find the company by the said charter where members planters and adventurers are considered by themselves and distinguished in privileges from planters and adventurers not

being members and we further find ourselves (being the King's grantees) in the said charter condemned, the clause plainly pronouncing in these words (we do ordaine that all such persons as of their own voluntary will and authority shall remove into Virgina without any grant, from us in a great and general quarter court in writing under our seals shall be deemed, as they are, occupiers of our land that is to say of the common land of us the said Treasurer and Company) much more such grantees as have their right from an erronous judgment as they pretend.

2dly. That if the Company be renewed by which means they as aforesaid have leave and the strength of their own charter of orders publickly in this colony to displant us the wiser world we hope will excuse us if we be wary to depart with what (next our lives)
3407 nearest concerns us (which are our estates being the livelihood of ourselves, wives and children) to the curtesy and will of such taskmasters from whom we have already experimented so much oppression.

3dly. We may not admit of so unnatural a distance as a company will interpose between his sacred majesty and us his subjects from whose immediate protection we have received so many royal favours and gracious blessings

For by such admission

1st. We shall degenerate from the condition of our birth being naturalized under a monarchical government and not a popular and tumultuary government depending upon greatest number of votes of persons of several humours and dispositions as this of a company must be granted to be from whose general quarter courts all laws binding the planters here did and would again issue.

2dly. We cannot without breach of natural duty and religion give up and resign the lands which we had granted and hold from the king upon certain annual rents (fitter as we humbly conceive if his majesty shall so please for a branch of his own royal stem then for a company) to the claim of a corporation; for besides our births our possessions enjoin us as a fealty without a salvafide aliis dominis.

We conceive by admission to a company the freedom of our trade (which is the blood and life of a commonweatlh) is impeached; for they who with most secret reservation and most subtility argue for a company tho' they pretend to submit the government to the King yet they reserve to the corporation propriety to the land and power of managing the trade, which word managing in any sense taken we can no ways interpret, then a convertable to monopolizing; for whether in this sense that all the commodities raised in the colony shall be parted with, exchanged or vended at such rates and prises as they shall set down or such wares and merchandizes as they shall import or be disposed into their
3408 magazine or such bottoms as shall from time to time be licensed or ordered by them, or whether in this sence that the planters only such commodities and in such porportions as by advice and determination of their quarter courts shall be directed, still the terms and condition of the planters are subjected to a mo-

nopoly that is to their sole guidance governing and managing with what reason we leave to the world to judge; for tho' we submit in depth of judgment and understanding to such as shall sit at the helm there, yet it is very possible and indeed most probable that at this distance wise men may mistake and there is more likelyhood that such as are acquainted with the clime and the accidents thereof may upon better grounds prescribe our advantages both for quantity and quality of commodities which by the bounty of his majesty we now enjoy by our Grand Assembly and in any other way will be destructive unto us according to our possession.

Though we may admit the pretence that the government shall be made good to the King that is that the King shall nominate and appoint the Governor. First we find it directly (besides the scope of the part which insists upon the restoring of the company in all formalities next we take it at best but for a falicie and trap not of capacity enough to catch men with eyes and foresight for upon a supposition that a governor shall be named and appointed by his majesty yet his dependence (so far forth as continuing or displacing) will by reason of their power and interest in great men there rest in them which necesarily brings with it conformity to their wills in whatsoever shall be commanded, which how pernicious it will be to the colony according to our assertion in this head we leave to the ablest judgments.

We the Governor, Council and Burgesses of this present Grand Assembly having taken into serious consideration these and many other dangerous affects which must be concometant in and
3409 from a company or corporation have thought fit to declare and hereby do declare from ourselves and all the commonalty of this colony that it was never desired, sought after or endeavored to be sought for either directly or indirectly by the consent of any Grand Assembly or the common consent of the people. And we do hereby further declare and testifie to all the world that we will never admit the restoring of the said company or any for or in their behalfs saving to ourselves herein a most faithful and loyal obedience to his sacred majesty our dread soverain, whose royal and gracious protection and allowance and maintenance of this our just declaration and protestation we doubt not according to his accustomed clemency and benignity to his subjects to find. And we do further enact and be it hereby enacted and manifested per authority aforesaid that what person or persons soever either is or hereafter shall be any planter or adventurer shall go about by any way or means either directly or indirectly to sue for advice, assist, abet, countenance or contrive the reducing of this colony to a company or corporation or to introduce a contract or monopoly upon our persons, lands or commodities upon due proof of conviction of any of the premises, (to wit) by going about by any way or means to sue for, advise, assist, abet, countenance or contrive the reducing of this colony to a company or corporation, or to introduce a contract or monopoly as aforesaid, upon the due conviction as aforesaid shall be held and deemed an enemy to the colony and shall forfeit his or their whole estate or estates that shall be found within the limits

of the colony the one half shall be and come to public uses the other moiety or half to the informer. This act to be in force and the penalty therein contained to extend to all the adventurers and planters now residing in the colony upon the publication at James City and to all adventurers and planters now in England or elsewhere out of the limits of the colony within five days after
3410 the arrival of this our said declaration, protestation and act within the kingdom of England, signed under our hands and sealed with our seal of the colony at James City the first day of April in the year of our Lord 1642 and in the eighteenth year of the reign of our soverain Lord Charles over England, &c.

The Governor, Council and Burgesses of this present Grand Assembly taking into serious consideration the many and weighty business begun in this present Grand Assembly and which yet do remain unfinished and to prevent all doubts whether the passing of the acts already agreed upon will not be a determination of this Assembly do hereby enact and by the authority of this present Grand Assembly be it enacted that notwithstanding the passing and enacting of divers acts already agreed upon this present Assembly shall lest be determined but that it be adjourned to the Thursday in Whitson week being the second day of June next coming at which time and day the whole body of this present Assembly consisting of the Governor, Council and Burgesses shall repair to James City then and there to determine and finish all such matters as shall be found necessary to be concluded and enacted whether in matters already begun or other business that shall then begin or be proposed that may redound to the glory of God, the honour of his majesty and the good of the Colony.

WILLIAM BERKELEY.

FRAN. WYAT.	SAM. MATHEWS.
CHA. WORMELY.	WM. PIERCE.
GEO. MENEFY.	HENRY BROWN.
THOS. PETTUS.	RICH'D BENNETT.
GEO. LUDLOWE.	RICH'D TOWNSHEAD.
JOHN WEALE.	JOHN UPTON.
EDW'D HILL.	OBEDIENCE ROBINS.
THOS. HARWOOD.	BEN. HARRISON.
NATH. GOUGH.	THOS. DEWE.
JOS. JOHNSON.	JOHN HILL.
MATH. CHILES.	FERD. FRANKLIN.
WM. DACKER.	WM. BUTLER.
THOS. FALLOWES.	GEO. WORLEIGH.
GEO. HARDY.	FRA. FOWLER.
THOS. BERNARD.	EDWARD WINDHAM.

God save the King.

Endorsed: Supreme Court U. S. No. 1 Original, Oct. Term, 1907. Maryland *v.* West Virginia. Filed Oct. 15, 1907. Office Supreme Court U. S. Filed Oct. 15, 1907. James H. McKenney, Clerk.